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The question, as to what is an "original package," seems to be agitating the minds of many of the inferior courts of the different States. Since the rendition of the decision by the United States Supreme Court, the number and kinds of "original packages" have increased each day with the zeal of liquor sellers and the ingenuity of their counsel, so that now the attention and time of many of the courts of the prohibition States is occupied with the perplexing conundrum, whether a bottle, or a can or a case or a barrel is an original package. Simply with a view of lessening the labors of such courts, during the period of this extremely hot weather, we beg to suggest respectfully that an original package is an original package. If this doctrine or definition is applied in each of these perplexing cases, the problem will be solved. In other words, any package is an original package if in fact it was shipped into the State in that form. A little more common sense and less technicality in this matter would produce more satisfactory results and save much trouble of mind.

Though we have no desire to engage in the bitter controversy now waging in many of the States, and rendered more fierce by reason of the late "original package" decision, as to the merits of prohibitory liquor laws, we confess ourselves much amused by recent disclosures of the *Voice*, a prohibition newspaper of New York. It seems that paper hit upon an ingenious plan for testing the market value of the principles of the press in a certain western State. It sent to the newspapers of that State, letters, purporting to come from an advertising agent, asking the price for the insertion of certain anti-prohibition matter in their news columns and also on editorial page as editorial matter. The answers received, most of which are given to the public, reveal the astounding fact that the editorial pages of most of the newspapers of the State in question are for sale at so much per line. There is no necessity of dwelling upon the outrage perpetrated by newspapers of that kind. An actual fraud is practiced upon the reader of an apparently unbiased and honest opinion, paid for at advertising rates.

Apropos of the above, it may be asked in what category shall the average newspaper be placed whose editorial columns are for sale or are controlled by its proprietor to promote dishonest legislative measures or to defeat honest and meritorious ones. We have in mind, by way of illustration, a new gas company which asks of a city legislative assembly the privilege of making and selling gas at a figure much below that charged by existing companies, and immediately the daily press of that city, through motives of self-interest clearly discernible, enter into a tirade against legislation of that kind and attempt to blind the people by specious pretenses of interest in the public good. Our opinion is that newspapers, whose proprietors have a direct pecuniary interest in public questions of this character, are no more fit to advise the public than a lawyer, who has a conflicting interest, to advise a client. We are led to say these things by reason of the great abuses and the unnatural obstacles in the pathway of obtaining a franchise from the municipal assembly of any large city.

What is to be the final outcome of corruption in municipal legislatures and of the partnership and co-equal participation in the same by corporations that desire to obtain for themselves valuable franchises or to frustrate and prevent others from obtaining them, is a subject which has long threatened the best endeavors of honest men, and which, notwithstanding the salutary lessons given to the world by the people of New York in breaking up the Tweed ring and the subsequent street railroad ring seems yet to thrive in most large cities with alarming vigor. It has been said that the average honesty of a legislative body is an index to the honesty of the people who elected them. No doubt many members enter municipal assemblies with honest motives and some are able to retain those motives, but the gold of corrupt corporations is too much for some of them. Such corruption and dishonesty no doubt may easily prompt honest men, and many of the dishonest ones who have be-

come disgusted by failures and disappointments to wish for the advent of the halcyon days foreshadowed in Bellamy's dream, when all property shall belong to the government, the honest administration of which will be guaranteed by the high standard of public morals, the temptation to wrong-doing being removed by the want of incentive to be otherwise than honest.

NOTES OF RECENT DECISIONS.

EXECUTION—EXEMPTION— PENSION. — The extent to which the exemption of pension money from execution may be carried, is shown by the case of Yates County National Bank v. Carpenter, 23 N. E. Rep. 1108, decided by the Court of Appeals of New York. There, it was held that the home of an ex-soldier of the United States, purchased with the proceeds of a pension, is exempt from execution for his debts, under Code Civil Proc. N. Y. § 1393, exempting pensions granted by the United States for military service. Ruger, C. J., says:

That statutes of this character are to be liberally construed, with the view of promoting the objects of the legislation, is established by a uniform course of authority, and that their force and effect are not to be confined to the literal terms of the act has also been held in numerous cases. In Hudson v. Plets, 11 Paige, 180, it was held that a creditor's bill would not reach the right of action of a judgment debtor for the conversion of exempt property. In Andrews v. Rowan, 28 How. Pr. 126, it was held that a receiver of the property of debtor, appointed in supplementary proceedings, did not take a claim, or a judgment thereon, for damages accruing to such debtor from one who had wrongfully taken and sold his exempt property on execution for debt. Justice Grover, writing the opinion of the supreme court in that case says: "If the judgment rendered for the injury may be acquired by a judgment creditor by proceedings supplemental to execution, there would be nothing to prevent seizing exempt property, selling it upon execution, and, when the debtor had sued and recovered a judgment therefor, compelling the application of such judgment to the payment of the debt for which the property was seized; thus entirely depriving the debtor of the exemption, and enabling the creditor in this way to collect his debt from property that the law has declared not liable for its payment." The only case in this court bearing upon the subject is that of Tillotson v. Wolcott, 48 N. Y. 188, where it was held that the exemption of a team, provided for a householder, should also apply to a judgment recovered by such householder against one who had tortiously taken and converted it to his own use. It was said by the court that "the judgment, when recovered by the debtor for the wrongful invasion of his privilege of the exemption of his property from levy and sale, represents the property for the value of which it was recovered." While the language of the statute did not, in terms, cover a judgment, it was held that it came within its spirit, and could not be taken by creditors. The opinion of Justice Grover in Andrews v, Rowan, 28 How. Pr. 126, is referred to and approved in the opinion of Judge Leonard.

The general exemption laws of the State provide for the protection of specific articles or classes of property, with a view of alleviating the condition of the poor by securing to them the use or consumption of the property exempted; but the present law has departed from the ordinary form of exemption, and, while seeking to accomplish the same object, provides, in terms, for the exemption of money, or its equivalent. It is quite obvious that such an exemption can produce no beneficial effect unless it is extended beyond the letter of the act, and given life and force according to its evident spirit and meaning. Like other statutes, the section in question must be construed according to the meaning and intent of the law-makers, and so as to effectuate their intention, so far as the language of the act will permit it to be done. Did the legislature intend to limit the force of their exemption to a pension so long only as it remained an obligation of the government, or consisted of cash in the hands of the pensioner? Or did they also intend to protect it after it had been expended in the purchase of articles of property designed to administer to the comfort and support of such pensioner and his family? If the latter was not intended, we must ascribe to the law-makers the absurd intention of granting pensions for the purpose of satisfying claims against pensioners, and not to provide for the care and comfort of invalid or aged soldiers. If the soldier is not protected in the act of exchanging his pension for the necessaries of life, its only effect would be to enable his creditors to take it in satisfaction of their claims. No benefit is conferred if the protection is not extended beyond the possession of the money itself; for its only value consists in its purchasing power, and, if the soldier is deprived of that, the pension might as well, so far as he is concerned, have remained ungranted. The plain purpose of the act was to promote the comfort of the soldier; to secure to him the bounty of the government free from the claims of creditors; and to insure him and his family a safe, although modest, maintenance so long as their needs require it. In the cases of exemption of specific articles from levy and sale upon execution, it seems to be well settled that it extends, not only to the protection of such articles while in use or possession, but also to any claim arising out of their conversion by a wrong-doer, or their destruction by fire or otherwise when insured. Freem. Ex'ns, § 235. The rule seems to be just and reasonable, and within the spirit of the exemption. In the case of the exemption of money or its equivalent, there has been some controversy in the courts with reference to the extent to which the exemption shall be carried. In such case it is somewhat difficult to lay down a rule, in precise terms, by which it may be determined in all cases what property is liable and what exempt from levy and seizure upon legal process for the payment of debts; but we entertain no doubt that, where the receipts from a pension can be directly traced to the purchase of property necessary or convenient for the support and maintenance of the pensioner and his family, such property is exempt under the provisions of this statute. Where such moneys can be clearly identified, and are used in the purchase of necessary articles, or are loaned or invested, for purposes of increase of

safety, in such form as to secure their available use for the benefit of the pensioner in the time of need, we do not doubt but that they come within the meaning of the statute; but where they have been embarked in trade, commerce, or speculation, and become mingled with other funds so as to be incapable of indentification or separation, we do not doubt but that the pensioner loses the benefit of the statutory exemption. These propositions, we think, are fully supported by the cases in this and other States. See Freem. Ex'ns, § 235; Burgett v. Fancher, 35 Hun, 647; Stockwell v. Bank, 36 Hun, 583.

DYING DECLARATIONS — PAROL EVIDENCE.—A good case on the subject of dying declarations is Hines v. Commonwealth, 13 S. W. Rep. 445, decided by the Court of Appeals of Kentucky, where it was held that where a dying declaration is made and reduced to writing, and sworn to by declarant, but the accused procures the rejection of the writing, he cannot object to oral testimony detailing what the deceased then said, provided it be shown that the statements were made under conditions rendering them admissible as a dying declaration, and that where an injured person makes statements at different times all may be proved, if made under a sense of impending death. Holt, J., says:

The authorities are not altogether in harmony, whether, if a dying declaration, when made, be reduced to writing, parol evidence may be given as to the declaration, although the writing be within the power of production by the party offering the oral evidence. Wharton says, however: "If the declaration of the deceased, at the time of his making it, be reduced into writing, the written document must be given in evidence, and no parol testimony respecting its contents can be admitted. And if a declaration, *in articulo mortis*, be taken down in writing, and signed by the party making it, the judge will neither receive a copy of the paper in evidence, nor will he receive parol evidence of the declaration." 1 Whart. Crim. Law, § 679. Russell says: "If the statement of the deceased was committed to writing, and signed by him at the time it was made, it has been held essential that the writing should be produced if existing, and that neither a copy nor parol evidence of the declaration could be admitted to supply the omission." 2 Russ. Crimes, 762. It seems to us that where a dying declaration is made and reduced to writing, and sworn to by the declarant, as in this instance, it, under the rule that the best evidence the case admits of must be produced, should, if within the power of the party, be produced. But where the accused for any reason procures the rejection of the writing, as he did in this case, it does not lie in his mouth to object to oral testimony detailing what the deceased then said, provided it be shown that the statement was made under the conditions necessary to render a statement admissible as a dying declaration.

The statement proven by the first witness and that by the last one were substantially the same. The accused was not therefore prejudiced by proving both; but, in any event, we think both were competent. The first one was not reduced to writing; and where an injured party makes statements at different times we see no reason why all may not be proven, if all be made under a sense of impending death. If in accord, they serve to show the truth of the statement; and if not, then the accused will be benefited by the contradiction. In either case they aid to elucidate the truth. In Russell on Crimes (page 763), it is said: "It is no objection to the admission of a dying declaration that the deceased made a subsequent statement to a magistrate, which was taken down in writing, and is not produced. In the case of Rex v. Reason, 1 Strange, 499, three several declarations had been made by the deceased in the course of the same day at the successive intervals of an hour each. The second had been made before a magistrate and reduced into writing, but the others had not. The original written statement taken before the magistrate was not produced, and a copy of it was rejected. A question then arose whether the first and third declarations could be received, and Pratt, C. J., was of opinion that they could not, since he considered all three statements as part of the same narrative, of which the written examination was the best proof; but the other judges held that the three declarations were three distinct facts, and that the inability to prove the second did not exclude the first and third, and evidence of those declarations was accordingly admitted."

HAWKERS AND PEDDLERS — LICENSE — MUNICIPAL CORPORATIONS.—Book canvassers and agents for subscription books will take an interest in the case of Emmons v. City of Lewistown, 24 N. E. Rep. 58, decided by the Supreme Court of Illinois. It was there held that under Rev. Stat. Ill., ch. 24, art. 5, § 1, par. 41, which authorizes city councils to license, regulate and prohibit hawkers and peddlers, a city has no authority to require book canvassers, who solicit subscriptions for books for future delivery, to obtain licenses, since such canvassers are neither hawkers nor peddlers. Swope, J., says:

It is here insisted that, as the defendant below was the agent of a publishing house located in the State of Missouri, and, in the acts complained of as being in violation of said ordinance, was engaged in the business of his non-resident principal, that the ordinance, when applied to him, interfered with the reserved powers given by the third clause of the eighth section of the first article of the constitution of the United States to congress, to regulate commerce "among the several States." Reliance is placed upon the case of Robbins v. Taxing Dist., 120 U. S. 489, 7 Supt. Ct. Rep. 592, as sustaining that contention; and, if the ordinance is otherwise valid, it must be conceded that that question is involved. We do not deem it necessary, however, to discuss or determine this question: for the reason that the ordinance must be held invalid, as applied to the class of offenses with which the appellant was charged, upon others and to us more satisfactory, grounds.

It is shown that appellant was canvassing from house to house, within the city, soliciting subscriptions to certain publications, taking orders therefor, to be paid upon the subsequent delivery thereof. It is not shown that he was carrying such publications, and

proposing to sell and deliver the same, or any other goods, wares, or merchandise, within said city. That he fell within the prohibition of the ordinance is not questioned. The city of Lewistown is incorporated under the city and village act; and the authority to pass this ordinance must be found, if at all, in paragraph 41, § 1, art. 5, c. 24, of the Revised Statutes, which gives the power to the city council, and the president and board of trustees in villages "to license, tax, regulate, suppress, and prohibit hawkers, peddlers, pawnbrokers, keepers of ordinaries, theatricals, and other exhibitions, shows, and amusements, and to revoke such license at pleasure." By a subsequent paragraph of the same section the city council is given power to pass all ordinances, and to make all rules and regulations as are proper and necessary to carry into effect the powers granted, and to impose penalties. The power given is to license, tax, regulate, suppress, and prohibit "hawkers" and "peddlers," etc.; and, if it shall be found that "canvassers" of books or other publications, on the streets or from house to house, are not "hawkers" or "peddlers," within the meaning of these words as used in the statute, then it is clear that the city council was without authority to pass an ordinance prohibiting such canvassing within the city without first obtaining a license, or imposing a penalty therefor.

It is to be observed that neither the ordinance nor statute attempts to define who shall be deemed "hawkers" or "peddlers," and we are therefore to determine from authority whether appellant falls within these designations. We said in City of Chicago v. Bartee, 100 Ill. 61, that the term "peddler," as used in this statute, was to be taken in its general and unrestricted sense, and embraced all persons engaged in going through the city from house to house, and selling commodities, —in that case, selling milk. Abbott's Law Dictionary defines a "hawker" to be "a person who practices carrying merchandise about from place to place for sale, as opposed to one who sells at an established shop. It is equivalent to 'peddler,'" the term now more commonly employed. The same author quotes from the case of Com. v. Ober, 12 Cush. 493, as follows: "It is not, perhaps, essential to the idea, but it is generally understood from the word, that a hawker is "one who not only carries goods for sale, but seeks for purchasers, either by outcry, which some lexicographers concede as intimated by the derivation of the word, or by attracting notice and attention to them, as good sfor sale, by an actual exhibition or exposure of them, by placards or labels, or by a conventional signal, like the sound of a horn for the sale of fish." Tomlin says; "Hawkers, peddlers, and petty chapmen" are "persons traveling from town to town with goods and merchandise." Bouvier defines "peddlers;" "Peddlers. Persons who travel about the country with merchandise for the purpose of selling." Webster's definition is: "A traveling trader; one who carries about small commodities on his back, or in a cart or wagon, and sells them." This list of definitions might be extended almost indefinitely, but enough has been given to show both the legal and popular meaning of the words "hawker" and "peddler." It has never been understood, either by the profession or the people, that one who is ordinarily styled a "drummer," that is, one who sells to retail dealers or others by sample, is either a hawker or a peddler; and the same is true in the respect of persons who canvass, taking orders for the future delivery of books and periodicals or other publications. It is a fundamental canon of construction that the legislature must be presumed to have used these words in their known and accepted signification, and intended thereby to confer upon the city and village authorities power to license, regulate, and prohibit only such callings and vocations as might fall within the terms employed in the act, as thus known and understood.

CONSOLIDATION OF CORPORATIONS.

I. *Power to Consolidate.*—The subject of this article being very extensive and the space at hand limited, the writer can do no more than suggest: he cannot illustrate or discuss. As a corporation cannot be created except by the legislature,[1] so it cannot, without the authority of the legislature, merge its existence in that of another corporation.[2] But under a general power to consolidate with any other company it may consolidate with another company whose charter contains no such power;[3] and when a consolidation is affected, the new company enjoys the same presumptions as to the rightfulness of its legal existence as an original company.[4] The legislature cannot compel the consolidation of private corporations,[5] although it has plenary power in this respect over municipal corporations;[6] and it may compel a consolidation under a governing statute giving it power to alter, revoke or annul charters.[7] Curative acts, validating defects in corporate organizations, are generally upheld where the legislature could have given the corporation a valid organization in the first instance,[8] and this is especially true of municipal corporations;[9]

[1] Hoadley v. County Commrs., 105 Mass. 526; Stowe v. Flagg, 72 Ill. 397.

[2] New York, etc. Canal Co. v. Fulton Bank, 7 Wend. (N. Y.) 412; Pearce v. Madison, etc. R. Co., 20 How. (U. S.) 441; Clearwater v. Meredith, 1 Wall. (U. S.) 25, 39; State v. Bailey, 16 Ind. 46; *Re* Era Insurance Society, 9 Week. Rep. 67; s. c., 30 L. J. (N. S.) 137; Winch v. Birkenhead, etc. R. Co., 16 Jur. 1035, 1037.

[3] Matter of Prospect Park, etc. R. Co., 67 N. Y. 371.

[4] Bell v. Pennsylvania, etc. R. Co., 10 Atl. Rep. 741; s. c., 2 Rail. & Corp. L. J. 476.

[5] Mason v. Finch, 28 Mich. 282; conceded in Pennsylvania College Cases, 13 Wall. (U. S.) 190, 212.

[6] 1 Dill. Mun. Corp. (4th ed.) § 44.

[7] Pennsylvania College Cases, *supra*.

[8] Syracuse City Bank v. Davis, 16 Barb. (N. Y.) 188; Mitchell v. Deeds, 49 Ill. 416, 419. See also People v. Plank Road Co., 86 N. Y. 1.

[9] Unity v. Burrage, 103 U. S. 447; Rogers v. Stephens, 86 N. Y. 623; Mutual Benefit Life Ins. Co. v. Elizabeth, 42 N. J. L. 235; State v. Guttenburg, 38 N. J. L. 419; State v. Union, 33 N. J. L. 350; Com. v. Marshall, 69 Pa. St. 328; Allen v. Archer, 49 Me. 346;

and accordingly the legislature has power to validate defective consolidations, where it could have authorized them in the first instance.[10] Defective consolidations may also be validated by legislative recognition of the new corporation.[11] No insuperable difficulty exists in the way of the creation of one corporation by concurrent legislation of two States of the Union;[12] though differences of opinion still exist as to the *status* of such corporations in the respective States.[13] On the same principle, consolidations constantly take place between corporations created by adjoining States for the operation of railway, telegraph and other continuous or connecting lines or works.[14] In general, it may be said that a corporation thus created remains a domestic corporation of each of the concurring States within that State, the peculiar legislation of neither State becoming operative within the limits of the other. Its property, within the particular State, is subject to taxation or vested with immunity from it, according to the law of that State or to the provisions of the original charter of the constituent company within that State, which privileges are not destroyed by the consolidation, unless otherwise provided by the constitution or by the statute;[15] though it may, under domestic legislation, avail itself of the permissive legislation of a concurring State.[16] It succeeds to the powers possessed by both of the preceding companies,[17] but it succeeds to the peculiar powers or privileges possessed by either, only within the State of its creation.[18] Specific liens follow the property into the hands of the new corporation, but are, it seems, enforceable only in the form of the *situs* of the property.[19] Consolidations sometimes take the form of an absorption of one company by another, the former company purchasing from the shareholders of the latter their shares and issuing its own shares in payment.[20] The legislature may authorize a domestic corporation thus to surrender its existence to a foreign one,[21] but this cannot be done without legislative authorization.[22] A statute has been held valid, but upon cloudy and doubtful grounds, although it does not provide for the payment of the debts of the absorbed company.[23] It may be added that the power to consolidate, given in a charter, is in the nature of a franchise or privilege, and is a contract between the corporation and the State, which cannot be withdrawn by subsequent legislation, in the absence of a reservation of power to withdraw it, either in the particular charter or in the constitution or a general law.[24]

II. *Steps Necessary to Effect a Consolidation.*—These, of course, must be prescribed by statute; and the statutes generally prescribe: 1. An agreement between the corporations intending to consolidate. 2. Ratified by a certain majority, generally, two-thirds of the stockholders of each corporation, at a duly notified meeting for that purpose. 3. The articles of consolidation thus ratified, properly authenticated, are filed with the secretary of State, which are thereafter evidence of the consolidation in all courts. As already suggested, a mere voluntary union,

Bennett v. Fisher, 26 Iowa, 497; Yost's Report, 17 Pa. St. 524; Menges v. Wertman, 1 Pa. St. 218.

[10] Mitchell v. Deeds, 49 Ill. 416, 419, recognized in Fisher v. Evansville, etc. R Co., 17 Ind. 407, 413. Compare Racine, etc. R. Co. v. Farmers,' etc. Co., 49 Ill. 331.

[11] Meade v. New York, etc. R. Co., 45 Conn. 199; McCauley v. Columbus, etc. R. Co., 83 Ill. 348, 352.

[12] Bishop v. Brainerd, 28 Conn. 289; Ohio & Mississippi R. Co. v. Weller, 1 Black (U. S.), 286; Railroad Co. v. Harris, 12 Wall. (U. S.) 65; Copeland v. Memphis, etc. R. Co., 3 Woods (U. S.), 651, 658; Blackburn v. Selma, etc. R. Co., 2 Phil. (U. S.) 525; Allegheny County v. Cleveland, etc. R. Co., 51 Pa. St. 228; Newport, etc. Bridge Co. v. Woolley, 78 Ky. 523.

[13] Compare Railroad Co. v. Harris, 12 Wall. (U. S.) 65, with Ohio, etc. R. Co. v. Weller, 1 Black (U. S.), 286, and compare the former with Allegheny County v. Cleveland, etc. R. Co., 51 Pa. St, 228, 231, and with Newport, etc. Bridge Co. v. Woolley, 78 Ky. 523.

[14] See Farnham v. Blackstone Canal Corp., 1 Sumner (U. S.), 46; Racine, etc. R. Co. v. Farmers Loan & Trust Co., 49 Ill. 331.

[15] See Ohio, etc. R. Co. v. Weber, 96 Ill. 443; Bridge Co. v. Adams County, 88 Ill. 615; *post*, subdivision IV.; *Re* St. Paul, etc. R. Co., 36 Minn. 85; Clark v. Barnard, 108 U. S. 436. See also Railroad Co. v. Vance, 96 U. S. 436; Memphis, etc. R., Co. v. Alabama, 107 U. S. 581; Const. Colo., art. 15, § 14.

[16] See Atty.-Gen. v. Boston, etc. R. Co., 109 Mass. 39.

[17] Meade v. New York, etc. T. Co., 45 Conn. 199, 221.

[18] Delaware Railroad Tax, 18 Wall. (U. S.) 206. Compare Pittsburg, etc. R. Co. v. Reich, 101 Ill. 157, 174.

[19] Eaton, etc. R. Co. v. Hunt, 20 Ind. 457, 464.

[20] Lawman v. Lebanon Valley R. Co., 30 Pa. St. 46.

[21] Racine, etc. R. Co. v. Farmers', etc. R. Co., 49 Ill. 331.

[22] Black v. Delaware, etc. R. Co., 24 N. J. Eq. 456; Taylor v. Earle, 8 Hun (N. Y.), 1. That shareholders cannot be forced into relations with new corporations without their consent, see Blatchford v. Ross, 54 Barb. (N. Y.) 41; Hartford, etc. R. Co. v. Crosswell, 5 Hill (N. Y.), 383; Frothingham v. Barney, 6 Hun (N. Y.), 366.

[23] Smith v. Chesapeake, etc. R. Co., 14 Pet. (U. S.) 45.

[24] Zimmer v. State, 30 Ark. 677, 680.

without the authorization of the legislature, does not constitute an amalgamation;[25] though, of course, this does not prevent railway companies from forming traffic arrangements without legislative sanction, so as to operate their roads as a continuous line.[26] The essential steps prescribed by the statute to effect the consolidation are conditions precedent, and must be performed, or the new company does not exist,[27] such as the filing of the certificate of consolidation with the secretary of State. Moreover, the certificate must contain the recitals prescribed by law, or it will be ineffectual.[28] Other conditions precedent may exist, which must be strictly complied with,—such as the election of a new board of directors of the united company.[29] Although every consolidation must take place in consequence of two things: 1. Legislative authorization; 2, a contract between the corporations duly ratified by their shareholders,—yet when it comes to the contract itself, a distinction must be carefully made between a consolidation and an agreement looking to a consolidation in the future.[30] There is nothing fraudulent in railroad companies combining to purchase another road which must go to sale,[31] and, as already stated, consolidations have frequently taken the form of purchases by one corporation of the shares (and sometimes the properties) of another.[32] But equity will scrutinize with jealousy any arrangement among corporations whereby the assets of an insolvent corporation, which are a trust fund for its creditors, are turned over to another corporation, frittered away or otherwise diverted from the creditors who have the equitable charge upon it;[34] and, as hereafter more fully stated, the property of the constituent companies passes into the hands of the new company, as a taker with notice, charged with the payment of the debts of the old company.[35] Where the consolidation has taken the form of a sale and purchase, as just explained, like any other sale, it cannot be rescinded without restoring the consideration or purchase price.[36]

III. *Effect of Consolidation upon the Rights and Liabilities of Shareholders* —Shareholders cannot be forced into a new corporation without their consent, unless there is a statute in force at the time of their subscription which otherwise provides,—in which case the statute enters into the contract.[37] Without such legislative reservation, amendments to charters or articles of association, authorizing either consolidations or subdivisions, do not bind dissenting shareholders,[38] though they may, of course, lose their right to object by acquiescence or laches.[39] Having embarked their money in one venture, they cannot be compelled, against their will, to transfer it to a larger or wider venture; and accordingly, in the absence of a governing statute opera-

[25] Shrewsbury, etc. R. Co. v. Stour Valley Co., 2 DeGex, M. & G. 866; s. c., 21 Eng. Law & Eq. 628.

[26] Hart v. Renselaer, etc. R. Co., 8 N. Y. 37; Stratton v. New York, etc. R. Co., 2 E. D. Smith (N. Y.), 184,

[27] Com. v. Atlantic, etc. R. Co., 53 Pa. St. 9; Peninsular R. Co. v. Tharp, 28 Mich. 506; Mansfield v. Drinker, 30 Mich. 124; Tuttle v. Michigan Air Line R. Co., 35 Mich. 247; Mansfield, etc. R. Co. v. Brown, 26 Ohio St. 223.

[28] State v. Vanderbilt, 37 Ohio St. 590 (failing to state residence of directors).

[29] Mansfield, etc. R. Co. v. Drinker, 30 Mich. 124

[30] Shrewsbury, etc. R. Co. v. Stour Valley R. Co., 2 DeGex, M. & G. 866; s. c., 21 Eng. Law & Eq. 628.

[31] St. Louis, etc. R. Co., 69 Mo. 224, 256; Williamson v. New Jersey Southern R. Ro., 26 N. J. Eq. 398.

[32] Eaton, etc. R. Co. v. Hunt, 20 Ind. 457, 462; Central, etc. R. Co. v. Georgia, 92 U. S. —.

[34] Patton v. Tibilcock, 91 U. S. 47; Alexander v. Relfe, 74 Mo. 495.

[35] Brum v. Merchants' Mutual Ins. Co., 16 Fed. Rep. 140; Hibernia Insurance Co. v. St. Louis, etc. Transptn. Co., 3 McCrary (U. S.) 398. Compare Bent v. Hart, 73 Mo. 641, affirming s. c., 10 Mo. App. 143.

[36] Buford v. Keokuk, etc. Co., 69 Mo. 611, affirming s. c., 3 Mo. App. 159.

[37] See Sparrow v. Evansville, etc. R. Co., 7 Ind. 366; Bish v. Johnson, 21 Ind. 269; Bishop v. Brainerd, 28 Conn. 289; Nugent v. Supervisors, 19 Wall. (U. S.) 241, 248. Compare Cork, etc. R. Co. v. Patterson, 37 Eng. L. & Eq. 398; Nixon v. Brownlow, 3 Hurl. & N. 686; Mansfield, etc. R. Co. v. Brown, 26 Oh. St. 223

[38] Pearce v. Madison, etc. R. Co., 21 How. (U. S.) 441; Mowrey v. Cincinnati R. Co., 4 Biss. (U. S.) 83; Clearwater v. Meredith, 1 Wall. (U. S.) 25; Tuttle v. Michigan Air Line, 35 Mich. 247; New Jersey, etc. R. Co. v. Strait, 35 N. J. L. 322; Carlyle v. Terre Haute, etc. R. Co., 6 Ind. 316; McCrary v. Junction R. Co., 9 Ind. 358; Booe v. Junction R. Co., 10 Ind. 93; Shelbyville Turnp. Co. v. Barnes, 42 Ind. 498. See also Lawman v. Lebanon Valley R. Co., 30 Pa. St. 42; Clinch v. Financial Co., L. R. 4 Ch. 117; Dougan's Case, L. R. 8 Ch. 540; Thomas v. Railroad Co., 101 U. S. 71; East Anglian R. Co. v. Eastern Counties R. Co., 11 C. B. 775; Eastern Counties R. C. v. Hawkes, 5 H. L. Cas. 331; Abbott v. Johnston, etc. R. Co., 8 N. Y. 27; McGregor v. Deal, etc. R. Co., 18 Ad. & El. (N. S.) 618; s. c. 22 L. J. Q. B. 69; Kean v. Johnson, 9 N. J. Eq. 401; Troy, etc. R. Co. v. Boston, etc. R. Co., 86 N. Y. 117; Middletown v. Boston, etc. R. Co., 53 Conn. 351.

[39] Deadrick v. Wilson, 8 Baxt. (Tenn.) 108. Compare International, etc. R. Co. v. Bremon, 53 Tex. 96, and Mowrey v. Indianapolis, etc. R. Co., 4 Biss. (U. S 78.

tive at the time of the subscription, a consolidation must, in order to be valid, be by the unanimous consent of the shareholders of both companies.[40] At least, the majority cannot force a dissenting minority into such an arrangement, without first purchasing their shares at their market value,[41] though it is not perceived on what ground the majority can force the minority to sell out, even for full value.[42] Statutes, however, exist in some of the States, providing for the appraisement and purchase of the shares of the dissenting minority; and where these statutes are in existence at the date of the contract of subscription and hence operative, that course is to be taken.[43] A dissenting shareholder is, except under the conditions already stated, entitled to an injunction to restrain the consolidation,[44] at least until his interest is purchased or secured;[45] and, under any circumstances, he is entitled to an injunction to restrain an *ultra vires* consolidation.[46] The consolidation lawfully effected, the shareholders of the constituent companies become shareholders of the new,[47] and the latter may maintain actions against them for assessments on their shares;[48] but otherwise until the organization of the new company has been lawfully perfected.[49] But the stockholder is not precluded from questioning the validity of the steps which have led up to the pretended consolidation,[50] and it seems that the corporation must prove its corporate existence unless the shareholder has in some way recognized it.[51]

IV. *Effect of Rights and Liabilities of Old Companies.*—The new company succeeds to all the rights, franchises, privileges and immunities, and becomes subject to all liabilities of the constituent companies,[52] except as previously indicated[53] and except as otherwise provided by applicatory statutory or

[40] Fisher v. Evansville, etc. R. Co, 7 Ind. 407; Kean v. Johnson, 9 N. J. Eq. 401; Chapman v. Mad River, etc. R. Co., 6 Ohio St. 119; Blatchford v. Ross, 54 Barb. (N. Y.) 45; s. c. 5 Abb. Pr. (N. S.) N. Y. 434; 37 How. Pr. (N. Y.) 100; McVicker v. Ross, 55 Barb. (N. Y.) 247; McCray v. Junction R. Co., 9 Ind. 358; Illinois, etc. R. Co. v. Cook, 29 Ill. 337; Mowrey v. Indianapolis, etc. R Co., 4 Biss. (U. S.) 78; Nathan v. Tompkins, 82 Ala. 438; Indianapolis, etc. R. Co. v. Taylor, 56 Tex. 96, 117; Hamilton Mutual Ins. Co. v. Hobart, 2 Gray (Mass.) 543; Clearwater v. Meredith, 1 Wall. (U. S.) 25, 39.

[41] Lawman v. Lebanon Valley R. Co., 30 Pa. St. 42, 49.

[42] See Mowrey v. Illinois, etc. R. Co., 4 Biss. (U. S.) 78, where the former case is criticised by McDonald, J.

[43] See N. J. Laws 1878, p. 58, § 2; *Id.* 1881, p. 221, § 8; *Id.* 1883, p. 242, § 2; New York Laws, 1884, ch. 237. So in England: 25 and 26 Vict., ch. 89, §§ 161, 175.

[44] Blatchford v. Ross, 54 Barb. (N. Y.) 42; McVicker v. Ross, 55 Barb. (N. Y.) 246. See Ridgway Township v. Griswold, 1 McCr. (U. S.) 151.

[45] Lauman v. Lebanon, etc. R. Co., 30 Pa. St. 42; State v. Bailey, 16 Ind. 46; Mowrey v. Indianapolis R. Co., 4 Biss. (U. S.) 78; Nathan v. Tompkins, 82 Ala. 437; s. c. 19 Am. & Eng. Corp. Cas. 336; s. c. 2 South. Rep. 747; 2 Rail. & Corp. L. J. 315.

[46] Charlton v. Newcastle, etc. R. Co., 5 Jur. (N. S.) 1096; s. c. 72 Week. Rep. 731; Nathan v. Tompkins, 82 Ala. 437. That he must first ask the directors to bring the action in the name of the corporation, see Mozley v. Alston, 1 Phil. Ch. 790; denied in Nathan v. Tompkins, 82 Ala. 437.

[47] Ridgway Township v. Griswold, 1 McCr. (U. S.) 151.

[48] Cork, etc. R. Co. v. Patterson, 18 C. B. 414; Fisher v. Evansville, etc. R. Co., 7 Ind. 407; Hanna v. Cincinnati, etc. R. Co., 20 Ind. 30; Washburn v. Cass County, 3 Dill. (U. S.) 251; Swartwout v. Michigan, etc. R. Co., 24 Mich. 389; Wells v. Rodgers, 60 Mich. 525; s. c., 27 N. W. Rep. 671; Cooper v. Shropshire Union R., etc. Co., 13 Jur. 443; s. c. 6 Railw. Cas. (Eng.) 136; Foss v. Harbottle, 2 Hare, 461; s. c. 7 Jur. 163; Exeter, etc. R. Co. v. Buller, 11 Jur. 527; Lord v. Cooper Miners' Co., 18 L. J. Ch. 65; Mozley v. Alston, 1 Phil. Ch. 790; s. c. 11 Jur. 315; Mansfield, etc. R. Co. v. Brown, 26 Ohio St. 223; Mansfield, etc. R. Co. v. Stout, 26 Ohio St. 241, 255; Mansfield, etc. R. Co. v. Drinker, 30 Mich. 124.

[49] Midland, etc. R. Co. v. Leech, 3 H. L. Cas. 872.

[50] Tuttle v. Michigan Air Line R. Co., 35 Mich. 247, 249; Peninsular R. Co. v. Tharp, 28 Mich. 506; Mansfield, etc. Co. v. Brown, 26 Ohio St. 223; Mansfield, etc. R. Co. v. Stout, 26 Ohio St. 241.

[51] Mansfield, etc. R. Co. v. Drinker, 30 Mich. 124; and cases in preceding note.

[52] Hancock Mutual Life Ins. Co. v. Worcester, etc. R. Co., 21 Northeast. Rep. 364; Abbott v. Railroad Co., 145 Mass. 450, 453; s. c. 15 N. E. Rep. 91; Car Co. v. Railroad Co., 115 U. S. 587; Baltimore v. Baltimore, etc. R. Co., 6 Gill (Md.) 288; Tomlinson v. Branch, 15 Wall (U. S.) 460; Ridgway Township v. Griswold, 1 McCr. (U. S.) 151; Chicago, etc. R. Co. v. Moffitt, 75 Ill. 524; Miller v. Lennox, 5 Coldw. (Tenn.) 514; Atchison, etc. R. Co. v. Phillips County, 25 Kans. 261; Washburn v. Cass County, 3 Dill. (U. S.) 251; Paine v. Lake Erie, etc. R. Co., 31 Ind. 283; Zimmer v. State, 30 Ark. 677; Thomas v. Abbott, 61 Mo. 176; Barksdale v. Finney, 14 Gratt. (Va.) 338; Harrison v. Arkansas Valley R. Co., 4 McCr. (U. S.) 264; Brum v. Merchants' Mutual Ins. Co., 16 Fed. Rep. 140; Sappington v. Little Rock, etc. R. Co., 37 Ark. 23; Louisville, etc. R. Co. v. Boney, 117 Ind. 501; s. c. 20 N. E. Rep. 431; 3 Law Rep. Ann., 535; Selma etc. R. Co. v. Harbin, 40 Ga. 706; Montgomery, etc. R Co. v. Boring, 51 Ga. 582; Baltimore, etc. R. Co. v. Mussleman, 2 Grant Cas. (Pa.) 348; Lewis v. Clarendon, 6 Reporter, 609; Indianapolis, etc. R. Co. v. Jones, 29 Ind. 465; St. Louis, etc. R. Co. v. Miller, 43 Ill. 199; Peoria, etc. R. Co. v. Coal Valley Mining Co., 68 Ill. 489; Robertson v. Rockford, 21 Ill. 451; Toledo, etc. R. Co. v. Dunlap, 47 Mich. 456; Central R. Co. v. Georgia, 92 U. S. 665; New York, etc. R. Co. v. Saratoga, etc. R. Co., 39 Barb. (N. Y.) 289; Daniels v. St. Louis, etc. R. Co., 62 Mo. 43.

[53] *Ante*, Subdivision I.

constitutional provisions,[54] and except also as to express liens, which merely follow the property coming into the hands of the consolidated company.[55] Statutes in nearly all cases provide that the new company shall acquire the rights and be subject to the liabilities of the old.[56] It succeeds to the rights of either constituent company, in respect of any municipal aid which it may be entitled under its charter to have voted to it; and if the bonds were voted prior to the consolidation to one of the old companies, the new company will be entitled to have them issued to it.[57] The theory is that such a statute confers a privilege upon the original corporation, which is not lost by its merger in the new.[58] But if a township has authorized the county court to make a subscription in its behalf, and the subscription is not made at the time of the consolidation, the change by the consolidation revokes the power, and a subscription thereafter will be invalid without a new power.[59] The new company, in like manner, succeeds to whatever exemption from taxation was enjoyed by the old, but only in respect of the property of the old to which the exemption applied,[60] and its betterments in the hands of the new.[61] Debts of the old corporation are enforceable against the new,[62] and their assets may be followed in equity, as trust funds, into the hands of the new, and the new company takes with notice of the trust,[63] though not where one corporation purchases the assets of another for value and in good faith.[64] But, as a mortgage foreclosure cuts off the antecedent general indebtedness of the mortgagor, such debts will not follow the property, where the consolidation takes place subsequently to such a foreclosure.[65] Nor is a creditor of the old company bound to accept the responsibility of the new;[66] but, as presently seen, the old is deemed to remain in existence for the purposes of actions. As the new company succeeds to the rights of the old, it has power to compromise and settle claims against them;[67] and the directors of the new company may discharge debts of the old, without special authorization of their shareholders.[68] It is scarcely necessary to add that the new company must perform the public obligations of the old, as for instance, the obligations of a common carrier.[69] While the consolidated company receives the assets of the old with notice, and therefore takes them *cum onere*, yet a purchaser from it may occupy, in respect of them, the *status* of a *bona fide* purchaser without notice, so as to hold them free from liability for the debts of the original company.[70]

V. *Questions of Judicial Procedure.*—For some purposes the effect of the consolidation

[54] Chicago, etc. R. Co. v. Moffitt, 75 Ill. 524; Zimmer v. State, 30 Ark. 677. Most of the statutes allowing consolidations subject the new company to the general laws relating to corporations, and it acquires its new franchises subject to legislative alteration or repeal. See Railroad Co. v. Maine, 96 U. S. 499, (affirming S. C. sub. nom. State v. Maine Central R. Co., 66 Me. 488); and compare New Jersey v. Yard, 95 U. S. 104; Tomlinson v. Jessup, 15 Wall. (U. S.) 454.

[55] Powell v. North Missouri R. Co., 42 Mo. 63.

[56] See Lightner v. Boston, etc. R. Co., 1 Lowell (U. S.) 338; Shaw v. Norfolk County R. Co., 16 Gray (Mass.), 407; Western, etc. R. Co. v. Smith, 75 Ill. 496; Thatcher v. Toledo, etc. R. Co., 62 Ill. 477. One court has taken the view that the new company succeeds only to the powers of the old company which possessed the fewest privileges, etc. State v. Maine Central R. Co., 66 Me. 488.

[57] State v. Greene County, 54 Mo. 540, 551; Henry County v. Nicolai, 95 U. S. 617; East Lincoln v. Davenport, 94 U. S. 801; Calloway County v. Foster, 93 U. S. 567; Scotland County v. Thomas, 94 U. S. 682; Smith v. Clark County, 54 Mo. 58; Hannibal, etc. R. Co. v. Marion County, 36 Mo. 294; Washburn v. Cass County, 3 Dill. (U. S.) 251; Nugent v. Supervisors, 19 Wall. (U. S.) 241; Atchison, etc. R. Co. v. Phillips County, 25 Kan. 261.

[58] Scotland County v. Thomas, 94 U. S. 682; Smith v. Clark County, 54 Mo. 58; Hannibal, etc. R. Co. v. Marion County, 36 Mo. 294; Lewis v. Clarendon, 6 Reporter, 609.

[59] Hartmon v. Bates County, 92 U. S. 569.

[60] Southwestern R. Co. v. Georgia, 92 U. S. 676; Central, etc. Co. v. Georgia, 92 U. S. 665; Philadelphia, etc. R. Co. v. Maryland, 10 How. (U. S.) 376; Tomlinson v. Branch, 15 *Id.* 460; Charleston v. Branch, 15 *Id.* 470; Branch v. Charleston, 92 U. S. 677; Chesapeake, etc. R. Co. v. Virginia, 94 U. S. 718; State v. Philadelphia, etc R. Co. 45 Md. 361.

[61] Branch v. Charleston, *supra*.

[62] Indianapolis, etc. R. Co. v. Jones, 29 Ind. 465; Montgomery, etc. R. Co. v. Boring, 51 Ga. 582; Thompson v. Abbott, 61 Mo. 176.

[63] Harrison v. Arkansas Valley R. Co., 4 McCr. (U. S.) 264; Barksdale v. Finney, 14 Gratt. (Va.) 338; Montgomery, etc. R. Co. v. Branch, 59 Ala. 139. Compare, The Key City, 14 Wall. (U. S.) 653.

[64] Powell v. North Missouri, R. Co., 42 Mo. 63.

[65] Houston, etc. R. Co. v. Shirley, 54 Tex. 125.

[66] New Jersey, etc. R. Co. v. Strait, 35 N. J. L. 323.

[67] Paine v. Lake Erie, etc. R. Co., 31 Ind. 283.

[68] Shaw v. Norfolk County R. Co., 15 Gray (Mass.), 407. Guaranty of the debts of the old by officers of the new: Wise v. Morgan, 13 Baily, (N. Y.) 402.

[69] Peoria, etc. R. Co. v. Coal Valley Mining Co., 68 Ill. 489.

[70] McMahan v. Morrison, 16 Ind. 172. Validity of bonds of old company put in circulation by new company: Eaton, etc. R. Co. v. Hunt, 20 Ind. 467.

is to dissolve the constituent companies;[71] but no such effect is procured as to the purchasing or absorbing company, where the consolidation takes place under the scheme of one company absorbing another by purchasing its stock and properties.[72] Nor is such the necessary effect in any case, unless the governing statute so states,[73] and the statutes of consolidation generally provide that the old companies shall be deemed to continue in existence for the purpose of preserving remedies, and there are judicial decisions which support this theory where the statute does not expressly so provide.[74] In Shackelford v. Mississippi, etc. R. Co., 52 Miss. 159, it is held that a pending suit may proceed to judgment against the old corporation, just as a suit against a *feme sole* may proceed to judgment against her after marriage.[75] Actions pending against the old company do not abate,[76] but may be prosecuted to judgment against the new company, without new process.[77] Liabilities of the old companies may be enforced by direct actions against the new.[78] As to the proof of consolidation, the existence of a statute authorizing it does not of course prove the fact, since action under the statute is necessary, and whether this has taken place cannot be judicially known by the courts.[79] The plaintiff having a demand against one of the constituent companies, must therefore, in order to charge the new company, ordinarily aver and prove the fact of the consolidation.[80] In making this proof, it has been held that he is aided by the rule of *estoppel* which operates against corporations in other cases, prohibiting them from denying their corporate existence,[81] though this is very doubtful, unless the corporation has done something which creates an estoppel, the doing of which is proved. The plaintiff must, therefore, make proof of the fact of consolidation, unless it is admitted; and it has been held that it may be admitted by the appearance of the consolidated company as a defendant to an action brought against the old company.[82] As elsewhere seen, the statutes generally provide that copies of the articles of consolidation, filed with the secretary of State, shall be proof of the fact in all courts; and this it is supposed would be the rule without an express statute.[83] In averring the fact of consolidation, the steps which have led up to it need not be stated.[84] Solemn admissions made by one of the constitutent companies in a judicial proceeding, may be evidence against the consolidated company.[85] If there has been an attempted, though void consolidation, which has been judicially dissolved, but while it remained *de facto* a judgment has been recovered in form against the consolidated company, it will be allowed to stand after the dissolution, as a judgment against the several constituent companies.[86]

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[71] McMahan v. Morrison, 16 Ind. 172; Fee v. New Orleans Gaslight Co., 35 La. Ann., 413; State v. Sherman, 22 Ohio St., 411; Hamilton Ins. Co. v. Hobart, 2 Gray (Mass.) 543; Com. v. Atlantic, etc. R. Co., 54 Pa. St. 9; Ridgway, Township v. Griswold, 1 McCr. (U. S.) 152, 153, per Dillon, J.; Tomlinson v. Branch, 15 Wall. (U. S.) 460; Clearwater v. Meredith, 1 Wall. (U. S.) 25.

[72] As in the case of Central R. Co. v. Georgia, 92 U. S. 665.

[73] Edison Electric Light Co. v. New Haven Electric Co., 35 Fed. Rep. 233.

[74] State v. Maine Central R. Co., 66 Me. 488, 500.

[75] See Roosevelt v. Dale, 2 Cow. (N. Y.) 581.

[76] Baltimore, etc. R. Co., v. Mussleman, 2 Grant (Pa.), 348; Hanna v. Cincinnati, etc. R. Co., 20 Ind. 30; Swartwout v. Michigan Air Line R. C., 24 Mich. 389, 394.

[77] Indianapolis, etc. R. Co. v. Jones, 29 Ind. 465; Kinion v. Kansas City, etc. R. Co. St. Louis Ct. of App., No. 4440, not yet reported. But the Supreme Court of Georgia has held that new process is necessary to bring in the consolidated company, on grounds which savor more of technicality than of sense. Selma, etc. R. Co. v. Harbin, 40 Ga. 706.

[78] Western, etc. R. Co. v. Smith, 75 Ill. 496; Warren v. Mobile, etc. R. Co., 49 Ala. 582; Pullman Car Co. v. Missouri Pacific R. Co., 115 U. S. 581; Louisville, etc. R. Co. v. Boney, 117 Ind. 501; s. c. 20 N. E. Rep. 432, 3 Lawy. Rep. Ann. 435; Thompson v. Abbott, 61 Mo. 176. According to some opinions the remedy is in equity (Mt. Pleasant v. Beckwith, *supra*); but the better opinion is that a direct action at law will lie upon an implied *assumpsit*. Warren v. Mobile, etc. R. Co., 49 Ala. 582. In one case it was held that the new company could not be substituted in place of the old, after a referee had reported in favor of judgment ainst the old, merely for the purpose of having the judgment entered against it in form,—the court reasoning that in some way it was entitled to make a separate defense. Prouty v. Lake Shore, etc. R. Co., 50 N. Y. 363, 368, *per curiam* opinion.

[79] Southgate v. Atlantic, etc. R. Co., 61 Mo. 90.

[80] Indianola R. Co. v. Fryer, 56 Tex. 609.

[81] Columbus, etc. R. Co. v. Skidmore, 69 Ill. 566.

[82] Kinion v. St. Louis, etc. R. Co. St. Louis Ct. App. 4440, not yet reported.

[83] Columbus, etc. R. Co. v. Skidmore, 69 Ill 566.

[84] Collins v. Chicago, etc. R. Co., 14 Wis. 492; Compare Hobart v. Chapelle, 14 Ind. 601; Com. v. Atl., etc. R. Co., 53 Pa. St. 9, 19.

[85] Philadelphia, etc. R. Co. v. Howard, 13 How. (U. S.) 307, 333.

[86] Ketcham v. Madison, etc. R. Co., 20 Ind. 280.

LIBEL—IMPUTATION OF INSANITY.

MOORE V. FRANCIS.

Court of Appeals of New York, April 15, 1890.

1. In a civil action, where the publication is admitted, and the words are unambiguous and admit of but one interpretation, the question of libel or no libel is one of law for the court.

2. A newspaper publication, stating that plaintiff, while acting as teller of a bank, became mentally deranged, superinduced by overwork, and that while in such condition he made injurious statements respecting the bank's affairs, which caused it trouble, is libelous *per se*.

ANDREWS, J.: The alleged libelous publication which is the subject of this action was contained in the Troy Times of September 15, 1882, in a article written on the occasion of rumors of trouble in the financial condition of the Manufacturers' National Bank of Troy, of which the plaintiff was at the time of the publication, and for 18 years prior thereto had been, teller. The rumors referred to had caused a "run" upon the bank; and it is claimed by the defendants, and it is the fair conclusion from the evidence, that the primary motive of the article was to allay public excitement on the subject. That part of the publication charged to be libelous is as follows: "Several weeks ago, it was rumored that Amasa Moore, the teller of the bank, had tendered his resignation. Rumors at once began to circulate. A reporter inquired of cashier Wellington if it was true that the teller had resigned, and received in reply the answer that Mr. Moore was on his vacation. More than this the cashier would not say. A rumor was circulated that Mr. Moore was suffering from overwork, and that his mental condition was not entirely good. Next came reports that cashier Wellington was financially involved, and that the bank was in trouble. A Times reporter at once sought an interview with President Weed of the bank, and found him and directors Morrison, Cowee, Bardwell, and others in consultation. They said that the bank was entirely sound, with a clear surplus of $100,000; that there had been a little tronble in its affairs, occasioned by the mental derangement of teller Moore, and that the latter's statements, when he was probably not responsible for what he said, had caused some bad rumors." The complaint is in the usual form, and charges that the publication was false and malicious, made with intent to injure the plaintiff in his good name and credit in his occupation as bank teller, and to cause it to be believed that, by reason of mental derangement, he had become incompetent to discharge his duties, and had caused injury to the bank, etc. The court on the trial was requested by the plaintiff's counsel to rule, as a question of law, that the publication was libelous. The court refused, but submitted the question to the jury. The jury found a verdict for the defendants, and, as the verdict may have proceded upon the finding that the article was not libelous, the question is presented whether it was *per se* libelous. If it was, the court erred in leaving the question to the jury.

It is the settled law of this State that, in a civil action for libel, where the publication is admitted, and the words are unambiguous and admit of but one sense, the question of libel or no libel is one of law, which the court must decide. Snyder v. Andrews, 6 Barb. 43; Matthews v. Beach, 5 Sandf. 256; Hunt v. Bennett, 19 N. W. 173; Lewis v. Chapman. 16 N. Y. 369; Kingsbury v. Bradstreet, 116 N. Y. 211, 22 N. E. Rep. 365. Of course, an error in submitting the question to the jury would be harmless if their finding that the publication was not libelous was in accordance with its legal character. The import of the article, so far as it bears upon the plaintiff, is plain and unequivocal. The words amount to a distinct affirmation—First, that the plaintiff was teller of the bank; second, that while acting in this capacity he became mentally deranged; third, that the derangement was caused by overwork; fourth, that while teller, and suffering from this mental alienation, he made injurious statements in respect to the bank's affairs which occasioned it trouble. The cases of actionable slander were defined by Chief Justice De Grey in the leading case of Onslow v. Horne, 3 Wils. 177; and classification made in that case has been generally followed in England and this country. According to this classification, slanderous words are those which (1) import a charge of some punishable crime; or (2) impute some offensive disease which would tend to deprive a person of society; or (3) which tend to injure a party in his trade, occupation, or business; or (4) which have produced some special damage. Defamatory words, in common parlance, are such as impute some moral delinquency or some disreputable conduct to the person of whom they are spoken. Actions of slander, for the most part, are founded upon such imputations. But the action lies in some cases where the words impute no criminal offense; where no attack is made upon the moral character, nor any charge of personal dishonor. The first and larger class of actions are those brought for the vindication of reputation, in its strict sense, against damaging and calumnious aspersions. The other class fall, for the most part at least, within the third specification in the opinion of Chief Justice De Grey, of words which tend to injure one in his trade or occupation. The case of words affecting the credit of a trader, such, as imputing bankruptcy or insolvency, is an illustration. The action is maintainable in such a case, although no fraud or dishonesty is charged, and although the words were spoken without actual malice. The law allows this form of action not only to protect a man's character as such, but to protect him in his occupation, also, against injurious imputations. It recognizes the right of a man to live and the necessity of labor, and will not permit

one to assail by words the pecuniary credit of another, except at the peril, in case they are untrue, of answering in damages. The principle is clearly stated by Bayley, J., in Whittaker v. Bradley, 7 Dowl. & R. 649: "Whatever words have a tendency to hurt, or are calculated to prejudice, a man who seeks his livelihood by any trade or business are actionable." Where proved to have been spoken in relation thereto, the action is supported; and unless the defendant shows a lawful excuse the plaintiff is entitled to recover without allegation or proof of special damage, because both the falsity of the words and resulting damage are presumed. Craft v. Boite, 1 Saund. 243, note; Steele v. Southwick, 1 Amer. Lead. Cas. 135.

The authorities tend to support the proposition that spoken words imputing insanity are actionable *per se* when spoken of one in his trade or occupation, but not otherwise, without proof of special damage. Morgan v. Lingen, 8 Law T. (N. S.) 800; Joannes v. Burt, 6 Allen, 236. The imputation of insanity in a written or printed publication is *a fortiori* libelous where it would constitute slander if the words were spoken. Written words are libelous in all cases where, if spoken they would be actionable; but they may be libelous where they would not support an action for oral slander. There are many definitions of "libel." The one by Hamilton in his argument in People v. Croswell, 3 Johns. Cas. 354, viz., " a censorious or ridiculing writing, picture, or sign, made with mischievous and malicious intent towards government, magistates, or individuals," has often been referred to with approval. But, unless the word "censorious" is given a much broader signification than strictly belongs to it, the definition would not seem to comprehend all cases of libelous words. The word "libel," as expounded in the cases, is not limited to written or printed words which defame a man, in the ordinary sense, or which impute blame or mortal turpitude, or which criticise or censure him. In the case before referred to, words affecting a man injuriously in his trade or occupation may be libelous although they convey no imputation upon his character. Words, says Starkie, are libelous if they affect a person in profession, trade, or business," by imputing to him any kind of fraud, dishonesty, misconduct, incapacity, unfitness, or want of any necessary qualification in the exercise thereof." Starkie, Sland. § 188. The cases of libel founded upon the imputation of insanity are few. The declaration in Morgan v. Lingen, *supra*, contained a count for libel, and also for verbal slander. The alleged libel was a letter written by the defendant in which he states that "he had no doubt that the plaintiff's mind was affected, and that seriously," and also that "she had a delusion," etc. It appeared that the defendant had also orally stated, in substance, the same thing. It was claimed that the writing was justified. The plaintiff was a governess. Martin, B., in summing up to the jury, said that "a statement in writing that a lady's mind is affected, and that seriously, is, without explanation, *prima facie* a libel." In respect to the slander, he said he thought there was no evidence of any special damage. The jury must, therefore, "consider whether the defendant ever intended to use the expressions he did with reference to the plaintiff's profession of governess." In Perkins v. Mitchell, 31 Barb. 465, it was held to be libelous to publish of another "that he is insane, and a fit person to be sent to the lunatic asylum;" Emott, J., saying: "Upon this point the case is clear." Rex v. Harvey, 2 Barn. & C. 257, was an information for libel for publishing in a newspaper that the king "labored under mental insanity, and it stated that the writer communicated the fact from authority." The judge charged that the publication was a libel, and the charge was held to be correct. The foregoing are the only cases we have noticed upon the point whether a written imputation of insanity constitutes a libel. Several of the text-writers state that to charge in writing that a man is insane is libelous. Add. Torts, 168; Townsh. Sland. & Lib. § 177; Starkie, Sland. § 164; Ogder, Sland. & Lib. p. 23. The publication now in question is not simply an assertion that the plaintiff is or has been affected with "mental derangement," disconnected with any special circumstances. The assertion was made to account for the trouble to which the bank had been subjected by reason of injurious statements made by the plaintiff while in its employment. Words, to be actionable on the ground that they affect a man in his trade or occupation, must, as is said, touch him in such trade or occupation; that is, they must be shown, directly or by inference, to have been spoken of him in relation thereto, and to be such as would tend to prejudice him therein. Sanderson v. Caldwell, 45 N. Y. 405, and cases cited. The publication did, we think, touch the plaintiff with respect to his occupation as bank teller. It imputed mental derangement while engaged in his business as teller which affected him in the discharge of his duties. The words conveyed no imputation upon the plaintiff's honesty, fidelity, or general capacity. They attributed to him a misfortune brought upon him by an overzealous application in his employment. While the statement was calculated to excite sympathy, and even respect, for the plaintiff, it nevertheless was calculated also, to injure him in his character and employment as a teller. On common understanding, mental derangement has usually a much more serious significance than mere physical disease. There can be no doubt that the imputation of insanity against a man employed in a position of trust and confidence, such as that of a bank teller, whether the insanity is temporary or not, although accompanied by the explanation that it was induced by overwork, is calculated to injure and prejudice him in that employment, and especially where the statement is added that, in consequence of his conduct in that condition,

the bank has been involved in trouble. The directors of a bank would naturally hesitate to employ a person as teller whose mind had once given way under stress of similar duties, and run the risk of a recurrence of the malady. The publication was, we think, defamatory, in a legal sense, although it imputed no crime, and subjected the plaintiff to no disgrace, reproach, or obloquy, for the reason that its tendency was to subject the plaintiff to temporal loss, and deprive him of those advantages and opportunities as a member of the community which are open to those who have both a sound mind and a sound body. The trial judge, therefore, erred in not ruling the question of libel as one of law. The evidence renders it clear that no actual injury to the plaintiff was intended by the defendants; but it is not a legal excuse that defamatory matter was published accidentally or inadvertently, or with good motives, and in honest belief in its truth. The judgement should be reversed, and a new trial granted. All concur.

NOTE.—1. *Words Actionable per se.*—Certain publications are said to be actionable *per se;* that is, that an action will lie for making them without proof of actual injury, because their necessary or natural and proximate consequence would be to cause injury to the person of whom they are spoken, and, therefore, injury is to be presumed.[1] When a certain publication admits of no just interpretation, except one which is injurious, its meaning is a question of law for the court.[2] But, in case of doubt as to the effect of the publication, it is the duty of the court to define libel or slander, and leave the determination to the jury.[3] It is libelous to charge a person with having uttered "foul lies" about another, and with possessing a "vile, slanderous tongue."[4] Generally, to publish of and concerning a person any language which tends to bring him in ill repute, or to destroy the confidence of his neighbors in his integrity, is libelous and actionable *per se.*[5] Hence, printed and published words which clearly imply that a person is a hypocrite,[6] and who, under the cloak of hypocrisy, oppresses widows and orphans, are actionable *per se.*[7]

2. Ordinarily words which impute to the person of whom they are spoken an indictable offense are regarded as actionable *per se,*[8] and in such a case, in order to recover, no special damages need be alleged or proved.[9] If the words charged as libelous impute a possible crime, they are actionable *per se,* though the words could not be true.[10]

3. *Words injuring one in his trade, profession or office* are *prima facie* actionable; but to be so, it must clearly appear that they are spoken or written of the party complaining in respect to his office, trade, profession or employment, and if the words relied upon do not of themselves show this, the declaration must contain the necessary averments to connect them.[11] It is held that in order that a charge of drunkenness may be actionable, it is necessary to couple it with some business in which drunkenness is a disqualification.[12]

In What Business is it Not?—Many distinctions and refinements, impossible to harmonize, have found place in the text-books, as well as in the utterances of courts upon the topic as to what words are *prima facie* libelous or slanderous when written or spoken of one with respect to his vocation. However, it may be safely asserted that published words which directly tend to the prejudice or injury of one in his office, profession, trade or business are actionable.[13] The injury consists in falsely and maliciously charging another with any matter in relation to his profession, trade or vocation, which, if true, would render him unworthy of employment.[14] Illustrations of publications actionable *per se* are: to charge an attorney with "betraying and selling innocence in a court of justice;"[15] to call an attorney a "shyster;"[16] to say of a physician, "he is no good, only a butcher; I would not have him for a dog."[17] So, statements imputing, not a lack of skill in any particular case, but general ignorance of medical science, incompetency to treat diseases, and of general want of professional skill made in respect to a practicing physician, are slanderous and actionable without proof of special damages.[18] Charging an actor with ungentleman and discourteous conduct, may or may not be actionable *per se,* depending upon the circumstances.[19] A statement that a general passenger agent of a railroad has been growing rich by making his local ticket agents, or some of them, divide their commissions with him, is libelous.[20] A newspaper publication headed: "A School child killed by a teacher," which falsely stated that the teacher had just finished punishing a child, when it coughed and dropped to the floor with a stream of blood running from its mouth, and before any one realized the danger, died on the floor, and further that the teacher had been arrested and lodged in jail, and that threats of lynching the teacher were freely made, is libelous *per se.*[21] In this case the court remarked: "It was not

1 Cooley on Torts, pp. 196, 196; Townshend on Slander and Libel, § 146.

2 Townsh. Sland. & Lib. 528.

3 Pittock v. O'Neill, 68 Pa. St. 253; 4 Walt's Act. & Def. 392.

4 Allen v. Wortham (Ky.), 13 S. W. Rep. 73.

5 Montgomery v. Knox, 23 Fla. 595; Sanderson v. Caldwell, 45 N. Y. 398; Stone v. Cooper, 2 Denio (N. Y.), 300; Towns. Sland. & Lib. §§ 179, 180.

6 Thorley v. Kerry, 4 Taunt. 355; Maloney v. Bartley, 3 Camp. 213; Townsh. Sland. & Lib. § 177.

7 Jones v. Greeley (Fla.), 6 South. Rep. 448. For numerous illustrations of word actionable *per se,* see notes to Woodruff v. Bradstreet Co. (N. Y. Ct. App.), 30 Cent. L. J. 11, and notes to Donaghue v. Caffey, 2 Atl. Rep. pp. 400 402. See Seery v. Viall (R. I.), 17 Atl. Rep. 552.

8 Hendrickson v. Sullivan (Neb.), 44 N. W. Rep. 448; Bell v. Fernald (Mich.), 38 N. W. Rep. 910; Hadley v. Gregg (Iowa), 38 N. W. Rep. 416.

9 Boldt v. Budwig, 19 Neb. 744, 28 N. W. Rep. 280; Chaplin v. Lee, 18 Neb. 440, 25 N. W. Rep. 609; Call v. Larabee 60 Iowa, 212; Pollard v. Lyon, 91 U. S. 225; Miller v. Parish, 8 Pick. (Mass.) 384, 385; Cooley on Torts, pp. 196-200.

10 Rea v. Harrington, 2 Atl. Rep. 475.

11 Ayre v. Craven, 2 Ad. & El. 7; Cooley on Torts, p. 201.

12 Broughton v. McGrew, 39 Fed. Rep. 672.

13 Starkie's Sland. § 117.

14 2 Kent's Com. (13th ed.) 17.

15 Ludwig v. Cramer, 53 Wis. 193, 10 N. W. Rep. 81.

16 Gribble v. Pioneer Press Co., 34 Minn. 342, 25 N. W. Rep. 710.

17 Cruikshank v. Gorden (N. Y.), 23 N. E. Rep. 457.

18 Secor v. Harris, 18 Barb. (N. Y.) 525; Fitzgerald v. Redfield, 51 Barb. (N. Y.) 484; Bergold v. Puchta, 2 Thomp. & C. 532; Lynde v. Johnson, 39 Hun (N. Y.) 12; Southsee v. Denny, 1 Exch. 196; Towns. Sland. & Lib. (3d ed.) § 193.

19 Williams v. Davenport (Minn.), 44 N. W. Rep. 311.

20 Shattuc v. McArthur, 25 Fed. Rep. 133.

21 Doan v. Kelley (Ind.), 23 N. E. Rep. 266.

essential that the publication should have charged the plaintiff with murder, or any other criminal offense, in order to make it libelous.[22] It was enough that it imputed to her (the teacher) the commission of a crime, or held her up to scorn, ridicule, execration or contempt."[23] A publication by a mercantile agency, organized for the purpose of ascertaining and reporting the financial standing and ability of merchants, etc., in reports issued and sent to such agency's subscribers that a judgment had been recovered against plaintiff, is not libelous *per se*.[24]

4. *Words spoken of a public officer*, in order to be actionable without averment of special damage, must impute to him some incapacity, or lack of due qualification to fill his position, or some positive past misconduct which will injuriously affect him in it, or the holding of principles hostile to the maintenance of the government. Hence, where the words spoken, simply express the speaker's opinion of the character of a public officer, however strongly expressed, but do not charge any positive misconduct, special damages must be averred. That is, the words spoken must be considered to contain a charge of positive misconduct.[26] The words: "Sometimes the change of heart comes from the pocket," spoken of a change of opinion of a legislator, do not import that the change had comes from a pecuniary inducement already received, but only the speaker's opinion that the legislator would change his conduct on account of the expectation of a future pecuniary benefit.[27] But imputing to an officer, in his official character, a want of integrity, and charging that he had been induced to act in his official capacity by a pecuniary or valuable consideration, is *prima facie* libelous.[28] In a Nebraska case, the mayor of the city said of the city attorney: "He is unfit to hold the office of city attorney. His opinion is too easily warped for money consideration." It was held that the words did not necessarily indicate dereliction of duty or dishonesty, and hence, not actionable *per se*.[29] When a libelous publication relates to a person in office, it may affect him in his personal or official character. If it relates to him personally alone, it is governed by the same rules that apply to an individual. If it applies to him as an officer, the better opinion seems to be that to make it actionable *per se*, the charge must be of such a character that, if true, it would be the cause of his removal from office.[30]

EUGENE MCQUILLIN.

[22] Gahe v. McGinnis, 68 Ind. 538; Bain v. Myrick, 88 Ind. 137.

[23] Prosser v. Callis, 117 Ind. 105; Crocker v. Hadley, 102 Ind. 416.

[24] Woodruff v. Bradstreet Co. (N. Y.), 22 N. E. Rep. 354, 30 Cent. L. J. 11, with note.

[25] Onslow v. Horne, 3 Wils. 177; Hogg v. Dorrah, 2 Port. (Ala.) 212.

[26] Wilson v. Noonan, 23 Wis. 105; Powers v. Dubois, 17 Wend. (N. Y.) 63; Littlejohn v. Greeley, 13 Abb. Pr. (N. Y.) 41; Cotulla v. Kerr (Tex.), 11 S. W. Rep. 1058; Rosenwater v. Hoffman (Neb.), 38 N. W. Rep. 857; 4 Wait's Act. & Def. 285.

[27] Sillars v. Collier (Mass.), 23 N. E. Rep. 723.

[28] 4 Wait's Act. & Def. 285.

[29] Greenwood v. Cobbey (Neb., 42 N. W. Rep. 413.

[30] Cotulla v. Kerr (Tex.), 11 S. W. Rep. 1058; Townsh. Sland. & Lib. 211, 212; Robbins v. Tredway, 2 J. J. Marsh. (Ky.) 540.

CORRESPONDENCE.

To the Editor of the Central Law Journal:

After occasionally reading in the CENTRAL LAW JOURNAL, in leisure hours, by which method alone, I am glad to say, I gained more than the cost of many years' subscription to the Journal, I had commenced to read Vol. 30 systematically, when in the 1st number already I came across that very neat query, No. 2, at page 16. I turned backward and backward, to find an answer, and read the one appearing in No. 18, at page 378, with great interest. But I must confess that I cannot agree with the process of reasoning employed there. After due deliberation, ere coming before your august body of accumulated learning, I beg to submit the following as a correct answer: C forecloses subject to the lien of B; therefore B is entitled, as between B and C, to $500; but B having had actual notice of A's mortgage, the latter's lien is prior to his, and as between A and B, B is entitled to but $300. Therefore, B otherwise being entitled to $500, his relation to A limits the amount of his share to $300. No act or negligence of A or C or any other party can alter this. As between A and C, C would be entitled to $500; but C's relation to B, whose lien of $500 is prior to his, limits his share to $300. The remaining to $500 will go to A.

CHARLES IOAS.

Kansas City, Mo

JETSAM AND FLOTSAM.

TECHNICALITY IN COMMON LAW PLEADING.—In the early common law, before the meliorating effect of any equitable element was infused into it, there were many forms of action concerning land—many more than were necessary, as remedies are now understood. Landed estates were the chief property at that time, and what little there was of personal property was but little cared for. There were then but four forms of personal action; two in contract, and two in tort. The former were debt and covenant. Every lawyer, who has not forgotten his rules of pleading, will readily understand how inadequate, even under liberal interpretation, those two forms of action were to meet all the varying questions that arise *ex contractu*. So there were but two forms of action in tort—trespass and detinue. And pleading was then so hampered with verbosity and technicality, that it was exceedingly difficult to frame a good declaration, or to find a case that came up to the technical requirements of any one of these four actions. Strict conformity with technical rules was required, for technicality was then substance. The client frequently found himself in the remediless condition of the would-be prosecutor of the western border. Some petty thief had stolen his turkey. He suspected that one of his neighbors was the thief, and believed if he could obtain a search warrant, he could reclaim his turkey and punish the offender. To the justice he went. Now, the justice was fresh in office, having recently been inducted into it, and a book of forms constituted his library, The facts were laid before the justice, and he was asked to issue the search warrant. He consulted his form book long, patiently and diligently. He found authority and a form for a warrant to search for a stolen hand-saw, but as for a stolen turkey, it was not in the book. So he gravely informed the prosecutor that there was no law authorizing a warrant to search for a stolen turkey; but he proposed to do the next best thing for him. He would and did issue a

rant authorizing search for a stolen hand-saw, informing the peosecutor, if in searching for the hand-saw he found his turkey, he might take and retain it. "For," said he gravely, "although the law has failed to provide a suitable remedy for you, it is clearly the law that no man can acquire a right to another's turkey by stealing it. Thou shalt not steal is the language of the good book itself." But the justice, with all his blunders, was governed by a broader sense of right than the common-law judges of England formerly were. Before them, not to be able to present a case fully up to the requirement of one of the four forms of action, with all the technical exactness then deemed essential, was to be turned out of court with no redress whatever.—*From address of Chief Justice Stone before Alabama Bar Association.*

CURRENT EVENTS.

MISSOURI BAR ASSOCIATION.—The annual meeting of the Missouri Bar Association was held at Excelsior Springs on Tuesday June 24th. The attendance was not very large but the proceedings were unusually interesting. The president, Geo. A. Madill, delivered an address. The feature of the occasion was a debate on the merits of the "original package" decision participated in by Jas. O. Broadhead, who opposed the decision, and F. M. Estes, who sustained it. The remarks of Col. Broadhead were strong, forcible and convincing. We hope to give our readers the benefit of a portion of them at least, in a future number. There were reports from the different committees with the exception of the committee on grievances whose chairman simply stated that they "were not grieved." Papers were read by B. C. Boone, on "Constitutional Guarantees" and by Charles Claflin Allen on "Special Juries." Edwin Silver as chairman of a committee made a report advocating the new constitutional amendment. The election of officers for the ensuing year resulted in the choice of L. C. Krauthoff, as president; F. M. Estes, secretary; W. C. Marshall, treasurer; and R. C. Bailey, of Harrisonville, as chairman of the executive committee.

TRIAL OF CHAMBERS FOR MURDER OF BOWMAN.—The value of a good character in a criminal proceeding was never more forcibly illustrated than in the recent trial at Ironton, Mo., of B. M. Chambers for the murder of Frank J. Bowman. The latter was a lawyer, who in life made himself notorious and unpopular by his methods, which were of the bulldozing character. He had been disbarred for unprofessional conduct but was readmitted through the supreme court. His life was a series of nervy performances, in which a sense of proper pride was apparently eliminated. His last act was to go to the house of Mr. Chambers, an old man, who through a series of years of financial misfortunes, for which Bowman was largely responsible, had maintained a good reputation and by means of an old execution in the hands of an accompanying deputy sheriff, attempted to frighten him into a settlement. While there he was shot, as claimed by Mr. Chambers in self-defense. The evidence at the trial showed little legal excuse for Mr. Chambers but it showed him to be a man of good reputation and Mr. Bowman to have a very bad one. The jury promptly acquitted and the people who knew both parties naturally applauded. The lesson of the verdict is not a bad one in so far as it teaches that a life of unvarying wrong finds no mourners in a death of legally unprovoked violence. Bowman's unavenged death is the legal verdict against Bowman's lawless life and the acquittal of Chambers is a sequence rather than a vindication.

HUMORS OF THE LAW.

THE ORIGINAL PACKAGE GIVES THANKS.—I am the Original Package.

I am aware that I am loaded to kill; that I incite to violence and murder, but that is my mission.

I am put up that way.

There was a time when I had to sneak around to get my work in. I hid in men's pockets, in cupboards, in hay mows, in all manner of out-of-the-way places.

I have lain in the private drawer of the doctor, the lawyer, the teacher, the editor; and have even concealed myself in the sacred desk, chuckling at the mischief I was able to do secretly.

But that time has gone by, thanks to a supreme court decision.

I, an Original Package, am no longer compelled to sneak about like a loafer and a vagabond.

I can hold up my head like a gentleman.

The Original Package is clothed with respectability.

Wherefore I rejoice and give thanks. ORIGINAL PACKAGE.

—*Texas Siftings.*

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

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1. ADMINISTRATION—Final Settlement.— The approval by the probate court of the final account and settlement of an administrator is a judgement, and in the absence of appeal, *certiorari*, or bill of review, conclusive on the distributees and creditors.—*Jose San Roman Sobrinos v. Chamberlain*, Tex., 13 S. W. Rep. 634.

2. ADMINISTRATOR — Fradulent Convenyances. — An administrator *d. b. n.*, who has obtained a judgment on the bond of his predecessor, may bring suit to se

aside a fraudulent conveyance of land by such predecessor, without issuing execution against him or his sureties.—*Harvey v. State*, Ind., 24 N. E. Rep. 289.

3. ADMIRALTY—Shipping.—The real value of the vessel in fault, without regards to liens upon her at the termination of her voyage, upon which she negligently caused the injuries complained of, measures the value of the interest of the owner, within the meaning of the limited liability act, which provides that the liability of a vessel for any loss, damage, or injury by collision, done without the privity or knowledge of the owner, "shall in no case exceed the amount or value of the interest of such owner in such vessel and her freight then pending."—*The Leonard Richards*, U. S. D. C., (N. J.), 41 Fed. Rep. 818.

4. APPEAL—Time—Waiver.—The time limited in which an appeal may be taken from the district to the supreme court (Code Wash. T. § 453, and Acts 1883, p. 59) is fixed in the interest of the commonwealth, and cannot be waived by the parties to the suit.—*Cogswell v. Hogan*, Wash., 23 Pac. Rep. 835.

5. ASSIGNMENT—Warehouse Receipts. — Under Code Ga. § 2244, providing that all choses in action may be assigned so as to vest title in the assignee, the assignee of a warehouse receipt may sue the warehouseman for conversion, on his refusal to deliver the goods to him. —*Zellner v. Mobley*, Ga., 11 S. E. Rep. 402.

6. ASSIGNMENT FOR BENEFIT OF CREDITORS.—Rev. St. Wis. §§ 1694-1696, require the assignee for benefit of creditors to file a bond with the clerk of the circuit court, together with "a copy" of the deed of assignment, bearing on it a certificate of a court commissioner that the assignee had in his presence indorsed thereon his acceptance of the trust: *Held*, where the original deed was filed and immediately taken from office, and subsequently a copy was filed lacking such indorsment, which was supplied shortly after, there was no valid assignment as against an attachment levied upon the goods in the assignee's possession before the indorsement was made.—*Hanson v. Dunn*, Wis., 45 N. W. Rep. 319.

7. ATTACHMENT.—A motion to discharge a warrant of attachment should be refused unless the defendant, or other moving party, denies the existence of every statutory ground alleged in the affidavit upon which the warrant was issued.—*Hornick Drug Co., v. Lane*, S. Dak., 45 N. W. Rep. 329.

8. ATTACHMENT—Action on Redelivery Bond. — The undertaking authorized by section 5545, Rev. St., to be given by a defendant in attachment, is intended to take the place of the attachment proceeding, and the property seized by virtue of the writ. It is the intent of the statute that the sureties in such undertaking shall be bound to the same extent, not in excess of the amount of the undertaking, as the property of the debtor or the garnishees would have been bound, had no undertaking been given, and the undertaking must be construed with reference to such intent. — *Jaynes, Ex'x, v. Platt*, Ohio, 24 N. E. Rep. 262.

9. BAIL BOND — Material Alteration. — A bail bond which obligates the principal to appear at the next term of court, "A. D. 188," being on an impossible date, is fatally defective. Its unauthorized alteration by the sheriff, so as to make it read "1889," being material, discharges the obligor.—*Wegner v. State*, Tex., 13 S. W. Rep. 608.

10. BANKS AND BANKING—Deposit of County Funds.—The vice-president of a bank, having authority to transact its business, who has given bond in his official capacity, to secure a deposit of county funds, has the power to afterwards assign to the county treasurer notes belonging to the bank as additional security, though the bond alone may be ample. — *Richards v. Osceola Bank*, Iowa, 45 N. W. Rep. 294.

11. CHAMPERTY—Collateral Contract.—Where the subject-matter of sale, purchase, and assignment was not a mere naked right of action, but assignable property, such as an execution, mortgage, and note, the ownership of which carried with it a right to sue as an incident of such ownership, and there was no champerty in the contract of assignment, champerty in a collateral contract between the beneficiaries of the purchase, one of whom was husband of the assignee, is no defense to a suit brought and prosecuted by her at the expense of her husband, but for the joint interest of him and his co-beneficiary.—*Reed v. Jones*, Ga., 11 S. E. Rep. 401.

12 CHANGE OF VENUE—Cross Complainant.—Defendants having had a change of venue, as authorized by Rev St. Ind. 1881, § 412, one who was joined and answered before, and filed a cross complaint after, such change, cannot demand a second charge, though asking for it both as defendant and cross complainant.—*Griffith v. Dickerman*, Ind., 24 N. E. Rep. 237.

13. CHATTEL MORTGAGE—Lease.—A written lease contained the following provision: "That said rents, whether due or to become due, shall be a perpetual lien on any and all goods murchandise furniture and fixtures now contained, or which may at any time during the continuance of this lease be contained, in the building, except such goods are sold in the usual course of retail trade." The lease was executed and filed as required by the law concerning chattel morgages: *Held*, that such provision constituted, and must be treated as, a chattel mortgage.—*Greeley v. Winsor*, S. Dak., 45 N. W. 325. Rep.

14. CONSTITUTIONAL LAW—Peddlers—License. — Ordinance 116 of the city of Austin, Minn., requiring all persons engaged in going from house to house, and selling or taking orders for any merchandise not of their own manufacture, to take out a license therefor, and providing penalty of fine or imprisonment for its violation, in so far as it applies to persons in the State making sales and taking orders for persons residing in another State, is repugnant to the constitution of the United States, giving congress the sole power to regulate interstate commerce.—*In re Kemmel*, U. S. D. C., (Minn.), 41 Fed. Rep. 783.

15. CONTEMPT—Attorney.—An attorney who resists the enforcement of a lawyer writ of execution by representing to bidders at the execution sale that the writ is invalid, and that any one purchasing at such sale would be sued by him, is guilty of contempt.—*In re Sowles*, U. S. C. C. (Vt.), 41 Fed. Rep. 752.

16. CONTRACT—Estoppel.—Where a contract for publishing a book fixes its cost at $1.89 per page, each page to contain 42 lines, consent by the author to a change of 39 lines to the page, after being informed by the publishers that it would not increase the cost, does not estop him from resisting an increased demand by the publishers on account of the change. —*Weed v. Dyer*, Ark., 13 S. W. Rep. 592.

17. CONTRACTS—Statute of Limitations. — A contract, for labor is not continuous where there is a break for over two years and a new contract then made; and charges for labor under the first contract, against which the statute of limitations has run, cannot be recovered.—*Gatin v. Bischoff*, Iowa, 45 N. W. Rep 306.

18. CONTRACT — Pleading. — A petition alleging that defendant inclosed part of plaintiff's land, and has since, by plaintiff's permission, occupied and used it, having promised to pay the reasonable value thereof, states a cause of action on an implied contract, and evidence of an express contract is incompetent.—*Shiner v. Abbie*, Tex., 13 S. W. Rep. 613.

19. CORPORATIONS—Director.—A director of a private corporation is not legally entitled to compensation for services rendered in the performance of duties appertaining to his office, unless it is provided for by a resolution or by-law of the corporation, adopted prior to the time of the performance of the services; nor will the auditing and allowance of a claim for such services by the board of directors of the corporation, render it legally binding upon the corporation, in the absence of proof of such prior resolution or by-law.—*Wood v. Lost Lake & C. Manuf'g. Co.*, Oreg., 23 Pac. Rep. 848.

20. CORPORATION—Foreign—Pleading.—A bill in equity

oy a foreign corporation, to have a loan evidenced by notes secured by a mortgage declared a lien on land, which shows on its face that the loan was made by complainant in the State, is demurrable, unless it alleges that, when the loan was made, complainants had complied with Const. Ala. art. 14, § 4, embodied in Act Ala. Feb. 28, 1887, requiring a foreign corporation, before doing business in the State, to file in the office of the secretary of State an instrument in writing designating at least one known place of business in the State, and an authorized agent or agents thereat. — *Christian v. American Freehold Land & Mortgage Co.*, Ala., 7 South Rep. 427.

21. CORPORATION—Liability of Stockholders. — Where a corporation, possessed of property subject to levy and sale on execution, though not sufficient to pay all its debts, continues to transact its business, the right of a creditor to enforce the statutory liability of its stockholders does not accrue until an execution, issued upon a judgment against it, has been returned unsatisfied for want of goods whereon to levy.—*Barrick v. Gifford*, Ohio, 24 N. E. Rep. 259.

22. COUNTIES—Medical Services.— A physician cannot recover from the county upon an implied contract for services rendered to a poor person whom the county physician refused to attend and the overseer refused to provide for.—*Morgan County v. Seaton*, Ind., 24 N. E. Rep. 213.

23. CRIMINAL EVIDENCE— Dying Declarations.—On indictment of "Lawson Baldwin" for murder, committed in an attempt to perform an abortion, dying declarations of deceased: "He is the cause of my death. Oh, those horrible instruments! Laws, is the cause of my death,—he is my murderer. They abused me terribly,"—are not admissible, since they may have referred to defendant as the seducer, and not as concerned in the abortion.—*State v. Baldwin*, Iowa, 45 N. W. Rep. 297.

24. CRIMINAL EVIDENCE—Murder. — Under Code Crim. Proc. Tex. art. 755, allowing any party, when facts stated by his own witnesses are injurious to his cause, to attack his testimony in any manner except by proving his bad character, the State, in a prosecution for murder, may, where a witness introduced by it testifies that he heard deceased make threats against defendant, prove by other witnesses that he made contradictory statements as to such threats. — *Self v. State*, Tex., 13 S. W. Rep. 602.

25. CRIMINAL LAW—Evidence — Depositions. — Where depositions taken for defendant, but not offered by him, were offered for the State, it was error to admit them against his objection, under Const. Ala. art. 1, § 7, which guaranties to every one charged with an indictable offense the right "to be confronted by the witnesses against him."—*Anderson v. State*, Ala., 7 South. Rep. 429.

26. CRIMINAL LAW—Accused as a Witness.—Where defendant testifies in his own behalf, and there is evidence tending to impeach his character for truth, an instruction that such evidence shall be regarded by the jury only in determining the credit, if any, to be given defendant's testimony as a witness in his own behalf, sufficiently restricts the application of such evidence to defendant's character as a witness. — *State v. Rainsbarger*, Iowa, 45 N. W. Rep. 302.

27. CRIMINAL LAW—Forcible Defilement. — An indictment for forcible defilement, which alleges that defendant did willfully take one S, unlawfully, and against her will, and by force and menace and duress compelled her to be defiled, and then and there lay hold of her with his hands, and held her upon the ground, and did then and there force, ravish, and have carnal knowledge of her in the manner and form aforesaid, is not bad for duplicity on the ground that it charges both forcible defilement and rape.—*State v. Montgomery*, Iowa, 45 N. W. Rep. 292.

28. CRIMINAL LAW—Murder.—Under the rule that in a prosecution for homicide the charge of the court should apply the doctrine of reasonable doubt, as between the different degrees involved in the case, an instruction that, in order to warrant a verdict of murder in the second degree, the jury must believe from the evidence, beyond a reasonable doubt, that defendant committed the homicide with implied malice, etc., sufficiently applies the doctrine as between murder in the second degree and manslaughter, in the absence of a request for a special instruction.—*Powell v. State*, Tex., 13 S. W. Rep. 599.

29. CRIMINAL LAW— Trial — View by Jury. — It is not error for the jury to make a view of the place where a felony is claimed to have been committed, under the order of the court and in charge of the sheriff, where the privilege is awarded the accused to accompany the jury, though he may refuse to attend the view.—*Blythe v. State*, Ohio, 24 N. E. Rep. 268.

30. CRIMINAL PRACTICE— Verdict. — On trial before a justice of the peace of an information containing four counts, each charging a separate offense, a finding, "I find defendant guilty as charged in count one of the information," is an acquittal on the other counts. — *State v. Servenson*, Iowa, 45 N. W. Rep. 305.

31. CRIMINAL PRACTICE— Disorderly Houses. — An indictment charging that defendant kept a house of ill fame, resorted to by persons for the purpose of prostitution "or" lewdness, only charges one offense,—keeping a house of ill fame.— *State v. Toombs*, Iowa, 45 N. W. Rep. 300.

32. CRIMINAL PRACTICE— Homicide — Continuance.— When, on indictment for murder, defendant's motion for a continuance, on the ground of absent witnesses, is overruled, and a verdict of guilty of murder in the first degree rendered, and it appears that there is some probability of the truth of defendant's theory that he killed deceased because he slandered his sister, and that the slander may be proved on a new trial by such absent witnesses, the new trial should be granted. — *Hammond v. State*, Tex., 13 S. W. Rep. 605.

33. DEATH BY WRONGFUL ACT—Damages. — An action by an administrator for intestate's death, under Rev. St. Ind. 1881, § 284, providing that the damages shall be distributed in the same manner as decedent's personal property, but shall inure to the exclusive benefit of decedent's widow and children, or, there being none to his next of kin, is within § 498, rendering persons whose interests are adverse to a decedent's estate, and who are necessary parties to an action brought by or against the administrator, and involving matters occurring before decedent's death, incompetent as witnesses against the estate.—*Hudson v. Houser*, Ind., 24 N. E. Rep. 243.

34. DEED — Insanity. — In the absence of fraud, the deed of an insane person, given before office found, to one who did not know of the grantor's insanity, is voidable only on return, of the consideration.—*Boyer v. Berryman*, Ind., 24 N. E. Rep. 249.

35. DEEDS—Inconsistent Recitals.—The preamble in a deed recited that the grantor had previously donated to a county certain lands for a county site, on which the court-house was situated; but the granting clause conveyed it to the president of the board of police and his successors, "for the use of the county T, and town of A." There was no former deed: *Held*, that the recital in the premable was controlled by the granting clause, and did not impose a condition that the land should be used for a county-site. — *Miller v. Board of Supervisors*, Miss., 7 South. Rep. 429.

36. DIVORCE—Desertion. — Want of affection between husband and wife is no defense to an action by the husband for divorce on the ground of desertion.—*Taylor v. Taylor*, Iowa, 45 N. W. Rep. 307.

37. DRAINAGE—Judgment— Appeal. — In proceedings for the establishment of a drain, under Rev. St. Ind. 1881, c. 49, petitioned for by the fedendants, plaintiff's remonstrance was erroneously rejected, on the ground that they were not within the class entitled to remonstrate, and, pending their appeal, there being no *supersedeas*, the drain was regularly established and completed *Held*, that, the judgment in favor of the drain being regular and unassailed, defendants could not be held

liable for damages for the overflowing of plaintiffs' land, though it was finally decided, on their remonstrance, that the proceeding should be dismissed.—*Thompson v. Reasoner*, Ind., 24 N. E. Rep. 223.

38. DRAINAGE COMMISSIONER—Bond.—Under Rev. St. Ind. § 4273, section 4277, an ex-commissioner is entitled to credit for money paid out on contracts, and for costs and expenses in an action on his bond, for conversion of assessments, brought by his successor in office.—*Harris v. State*, Ind., 24 N. E. Rep. 241.

39. EASEMENT—Way.—The owner of the fee in land across which a private right of way has been reserved in a deed is entitled to maintain a gate across the way at the point where it intersects the public road.—*Pyillips v. Dressler*, 24 N. E. Rep. 226.

40. EMINENT DOMAIN—Railroad Track.—In the absence of express statutory authority therefor, a city has no right to condemn, for the purpose of a public street, land held and used by a railroad company for its depot and track.—*City of Valparaiso v. Chicago & G. T. Ry. Co.*, Ind., 24 N. E. Rep. 249.

41. EQUITY—Decree—Taxation—A decree in an equity suit adjudging certain railroad property to be exempt from taxation for a term of years, and enjoining the assessment of taxes thereon, is a decree that reaches beyond parties to the record, and binds as well privies in estate.—*Secor v. Singleton*, U. S. C. C., (Mo.), 41 Fed. Rep. 725.

42. EQUITY—Parties.—In a suit by the stockholders of a railroad company to prevent a trust company, to whom a mortgage on the road has been given, from delivering some of the bonds secured by the mortgage, and to have such bonds canceled, the trust company is a necessary party to the controversy.—*Meyer v. Denver, T. & Ft. W. R. Co.*, U. S. C. C., (N. Y.), 41. Fed. Rep. 723.

43. EVIDENCE—Secondary Evidence.—Parol evidence of the contents of a petition in a highway case cannot be given without proof of diligent search made therefor, in the proper office, by one acquainted with the office.—*Howe v. Fleming*, Ind., 24 N. E. Rep. 238.

44. EXECUTION—Supplementary Proceedings.—In proceedings supplementary to execution, where an attorney for the defendant is called as a witness, and testifies that he had in his possession, after the commencement of the action, money, notes, checks, evidence of indebtedness, or other property of the defendant, he may be required to state what he had in his possession, and what he did with such property or effects.—*State v. Gleason*, Org., 23 Pac. Rep. 817.

45. EXECUTION — Claims. — Where property seized under an execution is claimed by a third person, it is immaterial whether its value is properly estimated in the return, if it is properly assessed on the claimant's bond.—*Carney v. Marsalis*, Tex., 13 S. W. Rep. 636.

46. EXECUTION SALE.—A successor in interest of a judgment debtor may redeem after confirmation of the sale.—*Rosenburg v. Croisan*, Oreg. 23 Pac. Rep. 847.

47. EXECUTION SALE—Married Woman.—A statutory bond executed by a married woman, on purchasing land at an execution sale, under Mansf. Dig. §§ 3035, 3037, providing for the execution of such bonds, and giving them the effect of a judgment, on which execution may issue, is voidable on the ground of the obligor's coverture, at her election only.—*Smith v. Hudson*, Ark., 13 S. W. Rep. 597.

48. EXECUTORS AND ADMINISTRATORS—Final Settlement.—Under Rev. St. Ind. 1881, § 2403, a petition which, after reciting the making of the final settlement, alleges that in such settlement the administrator represented that all debts of the estate had been paid; that the court thereupon accepted the settlement; that at the time the petitioner had a just claim against the estate, which he would have filed had not such settlement been made before the close of the year allowed for filing claims, and that he did not appear at such settlement, and was not summoned to attend the same,—is sufficient.—*Shirley v. Thompson*, Ind., 24 N. E. Rep. 253.

49. FEDERAL OFFENSE—Obstructing Justice.—Under Rev. St. U. St. § 5398, which makes it a criminal offense to resist the execution of "any mesne process or warrant or any rule or order of any court of the United States," resisting a marshal in his execution of an oral order of the court to remove from the court-room a person who has disturbed the proceedings of the court is indictable.—*United States v. Terry*, U. S. D. C. (Cal.), 41 Fed. Rep. 771.

50. FEDERAL OFFENSE—Contract Labor.—A declaration in debt for the penalty imposed by Act U. S. Feb 26, 1885, forbidding the importation of foreigners under contract for labor, which fails to allege that the foreign laborer did actually immigrate to this country, and that the defendant when he assisted him to migrate knew that he was under contract, is fatally defective.—*United States v. Borneman*, U. S. D. C. (N. J.), 41 Fed. Rep. 751.

51. GAMBLING CONTRACT.—An agreement by which a person, in consideration of a certain sum paid him by the owner of the cattle then on the road to market, guaranties that they shall sell for a certain price, and promises to make good the deficit in case they shall sell for less, and the owner promises on his part to pay such person the overplus in case they shall sell for more, is a gambling contract.—*First Nat. Bank v. Carrol*, Iowa, 45 N. W. Rep. 304.

52. GARNISHMENT—Exemption—Answer.—Under Rev. St. Tex. art. 218, which provides that "no current wages for personal services shall be subject to garnishment," a garnishee who is indebted to the principal defendant for current wages is bound to disclose the facts showing the exemption where the principal defendant has not voluntarily appeared, and has not been formally cited to appear, in the garnishment proceeding.—*Missouri Pac. Ry. Co., v. Whipker*, Tex., 13 S. W. Rep. 639.

53. GIFT CAUSA MORTIS—Delivery.—Under the facts: *Held*, a sufficient delivery of the property to the cashier of a bank as trustee for the donees, to constitute a valid gift *causa mortis*.—*Devol v. Dye*, Ind., 24 N. E. Rep. 246.

54. INJUNCTION—Quieting Title.—A complaint in an action against a city alleged that plaintiff was the owner of certain land; that defendant had unlawfully taken possession of the same, and, without having condemned it, was threatening to do irreparable damage to the same by cutting down the trees, and grading it as a street; and judgment was prayed that plaintiff's title be quieted as against defendant, and that defendant be enjoined from further trespassing thereon: *Held*, a complaint to obtain an injunction, and not to quiet title, and therefore a trial by jury was properly refused.—*Miller v. City of Indianapolis*, Ind., 24 N. E. Rep. 228.

55. INTOXICATING LIQUORS—Sale by Agent.—Where intoxicating liquors are sold at a bar, contrary to law, by a person apparently in charge as clerk, the sale is, in the absence of evidence to the contrary, a sale by the owner of the bar.—*Fullwood v. State*, Miss., 7 South. Rep. 432.

56. JUDGMENT—Revival—Limitations.—A motion to revive the lien of a judgment under the provisions of Code Wash. T. § 323, is not the commencement of an action, within the meaning of section 27, prescribing that an action on a judgment must be commenced within six years from its rendition.—*Burns v. Conners*, Wash., 23 Pac. Rep. 836.

57. LANDLORD AND TENANT—Lease.—Plaintiff and defendant were lessees, the one of the "east half," the other of the "west half," of a certain lot which, according to government survey, is bounded on the south by an east and west line, on the east and west by north and south lines, and on the north by a meandered lake: *Held*, that, though the land was leased to the parties for mining purposes only, and the land under the lake might be useful for that purpose, the true boundary line between the lessees' halves was a north and south line dividing the land within the government boundaries into equal acreage, and not one equally distant from the east and west boundaries.—*Hartford Iron Min. Co., v. Cambria Min. Co.*, Mich., 45 N. W. Rep. 351.

58. LANDLORD AND TENANT—Lease.—Under the term of a farm lease: *Held*, that the lessor could not take possession of the lessees' share of crops, for failure on their part to do the work properly, but only to enforce his lien, or for non-payment of rent or taxes.— *Koeleg v. Phelps*, Mich., 45 N. W. Rep. 350.

59. LANDLORD AND TENANT—Relation. — A minor 17 years old agreed with his parents to apply his wages to the purchase of a home for them during their lives. The parents went into possession of the lot, and shortly after coming of age the son received a conveyance in his own name. The father afterwards built a new house, repaired fences, and planted trees: *Held*, the relation of landlord, and tenant did not exist, and the son was not entitled to proceed summarily for possession under the statute.—*Buel v. Buel*, Wis., 45 N. W. Reps 324.

60. LANDLORD AND TENANT—Notice.—The possession of land by a tenant is sufficient notice of the landlord's title under an unrecorded deed to put a purchaser on inquiry.—*Levy v. Holberg*, Miss., 7 South. Rep. 431.

61. LIFE INSURANCE — Agent. — Facts held sufficient as a waiver of the restriction in the application and policy as to the agents, powers and estopped the company from denying them.—*Hartford Life & Annuity Ins. Co., v. Hayden's Admr.*, Ky., 13 S. W. Rep. 585.

62. LIFE INSURANCE.—The rules of a mutual aid association forbade the insurance of any person over 50 years old. Where the agent thereof and the insured, both knowing of this restriction, conspired together to falsely represent that the applicant was under 50 years, the company is not bound by the agent's acts, and there is no waiver of the restrictions. — *Hanf v. Northwestern Masonic Aid Ass'n*, Wis., 45 N. W. Rep. 315.

63. LIMITATIONS OF ACTIONS—Partial Payment.— The indorsement of a partial payment upon a note given for purchase money of lands does not suspend the operation of the statute of limitations as to the whole contract, so as to keep alive the vendor's lien upon the land, when in the hands of a subsequent purchaser not a party to the transaction. —*Kendall v. Clark*, Ky., 13 S. W. Rep. 583.

64. LIMITATIONS—Pleading.—Where it is apparent on the face of a complaint that the action was not commenced within the time limited by the Code, under subdivision 7 of section 67, Hill's Code, the objection must be taken by demurrer; and, if not so taken, it is waived, and cannot be taken by answer. Under that section, it is only where the objection does not appear on the face of the complaint that the same is to be taken by answer. — *Spaur v. McBee*, Oreg., 23 Pac. Rep. 818.

65. MALICIOUS PROSECUTION—Evidence.—In an action for malicious prosecution, the court properly refused to allow defendant to ask the prosecuting attorney whether, before the complaint was made and directed in the criminal action, he was satisfied that there was good ground for the complaint, as the good faith of the prosecuting attorney in the prosecution would not avail defendant.—*Peterson v. Toner*, Mich., 45 N. W. Rep. 346.

66. MARINE INSURANCE—Warranties.—Under a marine insurance policy against "any loss occasioned by fire, except when caused by explosion of boiler," and except as limited by warranties therein contained, such as "bursting of boilers, collapsing of flues, or the consequences of any character resulting from either of the foregoing exceptions," the insurer is liable for all losses occasioned by fire, except from explosion of boilers.—*Louisville Underwriters v. Durland*, Ind., 24 N. E. Rep. 221.

67. MASTER AND SERVANT—Fellow-servant. — Though the consignees of a cargo of coal have agreed to unload it at their own expense, and have put their laborers at the work, the captain of the boat, who, in accordance with custom, manages the guy-rope used in hoisting and transferring the coal, remains the servant of the boat-owners, and is not a fellow servant with a laborer of the consignees, and the boat-owners are liable for an injury to him resulting from the captain's negligence.—*Kilroy v. Delaware & H. Canal Co.*, N. Y., 24 N. E. Rep. 192.

68. MASTER AND SERVANT—Fellow-Servants.—A section master employed by a railroad company, and a section hand working under him, both of whom are engaged at the same manual labor, are fellow-servants.—*Lagrone v. Mobile & O. R. Co.*, Miss., 9 South. Rep. 432.

69. MORTGAGE.—A mortgagee in possession is entitled to compensation for tax and judgment liens paid, and repairs made by him, but not for improvements, though his mortgage is on its face an absolute deed, anp he believes himself to be the owner of the fee.—*Miller v. Curry*, Ind., 24 N. E. Rep. 219.

70. MORTGAGE—Foreclosure—Receiver.—Where lands sold in foreclosure by a receiver appointed for that purpose, at the instance of two mortgagees, were bid in by the receiver's attorney, who failed to pay the purchase money, one claiming in the right of one of said mortgagees cannot maintain an action to have the purchaser declared a trustee for him, as to a proportionate share of the lands, without first showing that no adequate remedy could be had against the receiver.—*Lockwood v. Reese*, Wis., 45 N. W. Rep. 313.

71. MORTGAGE FORECLOSURE—Description.— A cross-complaint seeking foreclosure of a mortgage is sufficient, on appeal, though it does not describe the land, but refers to the complaint for a description.—*Loeb v. Tinkler*, Ind., 24 N. E. Rep. 235.

72. MUNICIPAL CORPORATION—City Council is, under the provisions of the constitution, § 21, art. 2, and section 1679 Rev. St., the exclusive judge of the election of its own members. Whether its determination may be reviewed on error, *quære*.—*State v. Berry*, Ohio, 24 N. E. Rep. 267.

73. MUNICIPAL COPORATION—Dangerous Streets, — A city is liable in damages to one injured by the falling of a tree which stood in a public street, when the authorities know, or might have known, by the exercise of reasonable diligence, its dangerous condition, and took no steps to remove it, or to guard passers by against it.—*Chase v. City of Lowell*, Mass , 24 N. E. Rep. 212.

74. NEGLIGENCE—Vicious Animal.—A complaint, in an action to recover damages for being butted by a ram, alleging that defendant kept the animal knowing that it was accustomed to attack and butt mankind, is sufficient without alleging that the animal was vicious or dangerous, or was not confined.—*Graham v. Payne*, Ind., 24 N. Rep. 216.

75. NEGOTIABLE INSTRUMENT—Parol Evidence— In an action on a note, answers alleging that defendants were induced to sign it as sureties by false representations, made by the payee's agent, that the note was given for money to be borrowed by the maker to purchase cattle, and that the money should not be delivered to him until he had purchased the cattle, and executed a mortgage thereon to defendants, are not allowable, as they would destroy the written contract by parol evidence.—*Lanius v. Shuler*, Tex., 13 S. W. Rep. 614.

76. NEGOTIABLE INSTRUMENT—Fraud.— It is not necessary that the maker of notes, to entitle him to redress against a person who defrauded him into giving them, shall contest them before payment, in the hands of a presumably *bona fide* holder, though he may have had information from the person who defrauded him, or any other information short of a certainty touching the *bona fides* of the holder.—*Knight v. Linzey*, Mich., 45 N. W. Rep. 337.

77. NEGOTIABLE INSTRUMENT—Purchase of Note after Maturity.—Plaintiff made a loan of her own money, and took a note therefor payable to her son. He took it from her possession without her knowledge or consent, and sold it after maturity to an innocent third party for a valuable consideration: *Held*, that such assignee took the note subject to plaintiff's equitable title, and must return it to her.—*Merrell v. Springer*, Ind , 24 N. E. Rep. 258.

78. NUISANCE—Railroad Track in Street.— Under Gen. St. Nev. § 3273, a steam railroad and railroad track laid on wooden ties, and raised six or eight inches above the level of the street, and running along the middle of a public street 80 feet wide, is not such a special and peculiar injury to the residents on said street, different, in its nature as to danger of fire, danger to vehicles, foot-passengers, and children of tender years, from that sustained by the general public, as will warrants its abatement as a nuisance.—*Fogg v. Nevada C. O. Ry. Co.*, Nev., 23 Pac. Rep, 840.

79. PARTITION— Tenant in Common. — Plaintiff took possession of land under a deed from one who owned a third in fee and a life-estate in the residue, and a deed from another purporting to convey the interest of the remainder-men, which was afterwards found to be void, and held possession for over 20 years, making valuable improvements, without which the land would have been of little value. The remainder men lived in another State, and plaintiff had no knowledge of their rights: *Held*, that on partition of the land between himself and the remainder-men, plaintiff was entitled to allowance for his improvements.—*Killmer v. Wuchner*, Iowa, 45 N. W. Rep. 299.

80. PARTITION—Pleading.—A complaint, in partition, showing that plaintiff claims a third as surviving husband, under Rev. St. Ind., 1881, § 2485, that his wife left a will the provisions of which he rejected, and that defendants are the devises under the will, a copy of which is made part of the complaint, sets forth sufficiently the interests of the parties in the land.—*Goudy v. Gordon*, Ind., 14 N. E. Rep. 227.

81. PAYMENT—Negotiable Paper.—Where the drawers of an order had funds in the hands of the drawee on its presentation, a waiver by the payees of a cash payment, and an acceptance of a bill of exchange instead, extinguishes the debt though the exchange proves worthless. —*Loth v. Mothner*, Ark., 13 S. W. Rep. 594.

82. PLEADING—Limitation of Actions. — In an action against a railroad company for overflowing plaintiff's land, the original petition alleged solely that the overflow was due to the building of an embankment across a certain stream; a subsequent amended petition alleged that by reason of the embankment the stream was diverted from its course, and was then turned back into the channel at a point where defendant built a bridge in such a manner as to obstruct the flow of the stream and to collect drift, so that plaintiff's land was overflowed thereby: *Held*, that, as to the new issue presented, the amendment does not relate back to the original petition so as to stop the running of the statute of limitations when that was filed.—*Buntin v. Chicago, R. I. & P. Ry. Co.*, U. S. C. C., (Mo.), 41 Fed. Rep. 744.

83. PLEADING AND PRACTICE—Venue. — Section 5027, Rev. St., prescribing the countries within which a railroad company may be sued, relates solely to the jurisdiction of a person, and it is not necessary that the petition should state that its road passes into or through the country where the action is brought. A railroad company, like a natural person, submits itself to the jurisdiction of the court by appearing for any other purpose than to object to such jurisdiction.— *Ohio South R. Co., v. Morey*, Ohio. 24 N. E. Rep. 269.

84. POOR LAW—Counties.—A person who had a lawful settlement in the county of C, was severely injured while temporarily residing in the county of H, and the latter county furnished him medical attendance, nurses, etc., for several months: *Held*, on suit brought to recover for such relief by the county of H, against the county of C, that the county of H, could not recover, in the absence of any provision of the statute authorizing such recovery.—*Hamlin County v. Clark County*, 45 N. W. Rep. 329.

85. PRINCIPAL AND SURETY—Mortgage.—In an action on a note, and to foreclose a mortgage securing it, a cross-complaint by one of the defendants alleging that he executed the note and mortgage as security for a co-defendant, and asking that the latter's interest in the land be sold before that of the cross-complainant, is good under Rev. St. Ind. § 1212.—*Chaplin v. Baker*, Ind., 24 N. E. Rep. 233.

86. PRINCIPAL AND SURETY— Prosecuting Attorney.— The sureties on the official bond of a prosecuting attorney, conditional that he will honestly discharge the duties of his office, are not responsible for his neglect to take default and judgment of forfeiture on a recognizance where the defendant fails to appear, in the absence of any express statutory direction that he should take such default.—*State v. Egbert*, Ind., 24 N. E. Rep. 256.

87. PUBLIC LAND—Pre-emption. — Under Const. Tex. art. 7. § 6. in regard to school lands, one who does not reside upon the land claimed is not an "actual settler," although he has fenced the entire track, and cultivated several acres of it.—*Baker v. Millman*, Tex., 13 S. W. Rep. 618.

88. PUBLIC LAND— Pre-emption. — The right of pre-emption given to actual settlers on county school lands by Const. Tex. art. 7, § 6, extends to future settlers as well as to those residing on the land at the time the constitution was adopted, and is not affected by a sale of the land by the county to another before the settler offered to buy it.—*Baker v, Dunning*, Tex., 13 S. W. Rep. 617.

89. RAILROAD COMPANY—Mortgage.—A railroad company mortgaged the whole of its line in the State of Louisiana; "also all real and personal estate within the State owned by the company at the date of this mortgage, or which may be acquired by it thereafter, appurtenant or necessary for the operation of said line:" *Held*, under Rev. Civ. Code. La. art. 3308, that said mortgage did not affect land there after granted to the company to aid in the construction of the road.—*New Orleans & Pac. Ry. Co., v. Union Trust Co.*, U. S. C. C., La. 41 Fed. Rep. 717.

90. RAILROAD COMPANIES—Exemption from Taxation. —Under Laws Wis. 1874, c. 126, the [State granted lands to a railroad company, to aid in the construction of its road, on condition that it should construct 20 miles each year until the road should be completed, patent for a certain amount of the land to be issued to the company on completion of each 20 miles. Laws Wis. 1879, c. 22, provided that all of such lands theretofore patented, or which might thereafter be patented, under the law of 1874, should be exempted from taxation of all kinds for 10 years: *Held*, that the period of exemption did not begin to run as to each batch of land thereafter patented from the date of patent, and continue 10 years therefrom, but began to run at once as to all the land granted, and ceased entirely, as to all, at the end of 10 years.—*State v. Harshaw*, Wis., 45 N. W. Rep. 309.

91. RAILWAY COMPANY—Fires.—The escape of fire from a passing engine, whereby property is destroyed, raises a presumption of negligence in the construction and management of such engine, and casts on the defendant the burden to rebut such presumption.—*Koontz v. Oregon Ry. & Nav. Co.*, Oreg., 23 Pac. Rep. 820.

92. RECEIVER—Attachment.—Th ereceiver of an insolvent debtor appointed by the court of another State is not entitled to funds of such debtor in the hands of a person in Indiana who has been garnished by other creditors of the insolvant, though the garnishing creditors are also non-residents, and though the insolvent, being a citizen of the State in which the receiver was appointed, had, before the garnishment took place, assigned all his property to the receiver, in obedience to an order of said court.—*Catlin v. Wilcox Silver Plate Co.*, Ind., 24 N. E. Rep. 250.

93. RELIGIOUS SOCIETY—Bequest.—Mill and V. Code. Tenn., §§ 2006, 2007, which provides for the acquisition and holding of lands of public worship, by religious denominations, whether incorporated or not, do not empower an unincorporated local religious association to take a bequest of personal property. — *Rhodes v. Rhodes*, Tenn., 13 S. W. Rep. 590.

94. REMOVAL OF CAUSES.—On filing of a petition for removal of a cause from a State to a federal court,

which on its face shows that the cause is within the statutes of the United States, by which alone the right of removal is governed, the State court loses jurisdiction *eo instanti*, without the necessity of a formal order of removal.—*Stix v. Keith*, Ala., 7 South. Rep. 423.

95. REPLEVIN— Agent — Judgment. — One who takes property from another, and shows no right of possession either in himself or the person for whom he claims to act as agent, takes and detains unlawfully; and if, on replevin, the property cannot be found, judgment should be given against him for its value.—*Pranke v. Herman*, Wis., 45 N. W. Rep. 312.

96. SALES—False Representations. — When a person buys goods under false representations as to his credit, a suit for the price and attachment levied on the goods by the seller, with knowledge of such false representations, is a confirmation of the sale.—*Mansfield v. Wilson*, Ark., 13 S. W. Rep. 598.

97. SLANDER—Evidence. - Words importing want of chastity to a woman are actionable, *per se*.—*Freeman v. Sanderson*, Ind., 24 N. E. Rep. 239.

98. SPECIFIC PERFORMANCE— Title.—Specific performance of a contract to purchase real estate, in which it is stipulated that the title shall be "first-class," will not be enforced where it appears that there is an outstanding right in one who had left his home 24 years before, being at the time 23 years old, unmarried, in feeble health, and very dissipated, and who was seen shortly after in destitute circumstances, and never heard from again, and where it further appears that no opposing title has ripened by adverse possession.—*Vought v. Williams*, N. Y. 24 N. E. Rep. 195.

99. STATUTES—Authentication.—After an act has been passed by the legislature, signed by the proper officers of each house and by the governor, and filed in the office of the secretary of State, and published as a law, the presumption is conclusive that the act is the same as was enacted by the legislature, and neither the legislative journals, nor any other evidence, can be received to show the contrary.—*In re Tipton*, Tex., 13 S. W. Rep. 610.

100. TAXATION—Injunction.—Courts of equity should, in general, interfere to restain the collection of a tax, or annul tax proceedings, only where it appears either that the property sought to be tax is exempt from taxation or that the tax itself is not warranted by law, or the persons assuming to assess and levy the same are without authority so to do, or where the proper taxing officials have acted fraudulently.— *Farrington v. New England Investment Co.*, N. Dak., 45 N. W. Rep. 191.

101. TAXATION—Assessment.—A tax-payer whose property has been assessed at a sum greater than its true value must make application for relief to the board of equalization, according to the provisions of Gen. St. Nev. § 1091, and, if he fails to do so, the overvaluation cannot avail him as a defense in an action by the State to collect the taxes.—*State v. Sadler*, Nev., 23 Pac. Rep. 899.

102. TAXATION— County School Lands. — Const. Tex. art. 11, § 9, exempting from taxation the "property of counties, cities, and towns owned and held only for public purposes," applies to county school lands; and, where such lands are held under a lease from the county, they cannot be taxed as the property of the lessee.—*Davis v. Burnett*, Tex., 13 S. W. Rep. 613.

103. TAX-SALE.—A tax-sale of "115 x 138 feet, corner of Columbia and 6th streets, section 20, town 23, range 4 west, city of La Fayette," being sufficient to pass the tax lien, though insufficient to convey title on account of the defective description, the purchaser cannot recover his money back from the county.—*Ball v. Barnes*, Ind., 24 N. E. Rep. 142.

104. TAX-TITLES.— Under Act Neb. 1861, relating to tax-deeds, providing that "such conveyance shall be executed by the county treasurer, under his hand and seal," a tax-deed not executed by the treasurer under his seal of office is void.—*Deprotson v. Young*, U. S. S. C. 10 S. C. Rep. 589.

105. TAX-TITLE—Confirmation of Sale — Donation. — Where land is sold for taxes, and a decree confirming the sale is made by a court not legally constituted, but afterwards a deed is executed in pursuance of the sale by order of the proper court, and an order for the possession entered, it amounts to a confirmation of the sale, and validates the title.—*Miller v. Reynolds*, Ark., 13 S. W. Rep. 597.

106. TELEGRAPH COMPANIES—A regulation of a telegraph company, printed on blanks, prescribing limits within which a message will be delivered free, and requiring a deposit to cover delivery charges if the message is to be delivered outside of the limits, is reasonable; and where the person to whom a message is addressed lives outside the prescribed limits, it is incumbent on the sender of the message, who knows of the regulations, to ascertain the fact, and make the required deposit.—*Western Union Tel. Co., v. Henderson*, Ala., 7 South Rep. 419.

107. TELEGRAPH COMPANIES — Damages. — Where a telegraph company has for 20 days negligently failed to deliver a message weich reads: "My wife is very ill; not expected to live,"—the sender, though suffering no pecuniary loss, is entitled to compensation for the mental anguish he suffered consequent on its non-delivery, as the message is notice to the company that mental anguish will probably come to some one if not promptly delivered.— *Reese v. Western Union Tel. Co.*, Ind., 24 N. E. Rep. 163.

108. TELEGRAPH COMPANIES—Penalty.— Rev. St. Ind. 1881, § 4176, imposing a penalty upon telegraph companies for failure to transmit and deliver messages, does not apply to a message sent from another State to a place within the State.—*Rogers & West. Union Tel. Co.*, Ind., 24 N. E. Rep. 157.

109. TELEPHONE COMPANIES—Mandamus.— Under Act Ind. April 8. 1885, §§ 2, 3, a telephone company, doing a general business, must furnish any person within the local limits of its business, in any town or city, with a telephone and connections for his own use, and it was no defense to say that the company did not rent telephones, but furnished such services by means of public stations only. —*Central Union Tel. Co., v. State*, Ind., 24 N. E. Rep. 215.

110. TOWNSHIP— Attorney and Client. — A township cannot be held liable for services rendered by an attorney at the request of the board of county commissioners, but without employmant from the township authorities, in a proceeding instituted by a railroad company against the county auditor to compel that officer to place taxes on tax duplicate.—*Shirts v. Noblesville Tp.*, Ind., 24 N. E. Rep. 169.

111. TRESPASS—Opening Road.—A road overseer who removes a fence on plaintiff's land in pursuance of a valid order of the county court opening a road across, it is not liable for injury occasioned by stock entering plaintiff's premises thereby. — *Cockrum v. Williamson*, Ark., 13 S. W. Rep. 592.

112. TRESPASS—Color of Title.—In an action for trespass on vacant lands, where the trial court has found that there was no possession on the part of the plaintiff whose only acts in relation thereto were to look over them occasionally, and request neighboring residents to look after trespassers, the reviewing court cannot say there was no evidence to support the finding, and it must stand.—*Hecock v. Van Dusen*, Mich., 45 N. W. Rep. 343.

113. TRESPASS TO TITLE—Evidence. — Where persons in possession of land as tenants disown the relation, and claim adversely, trespass to try title will lie against them.—*Hall v. Haywood*, Tex., 13 S. W. Rep. 612.

114. USE AND OCCUPATION—Damages.—Defendant appealed from a judgment in ejectment giving plaintiffs possession of land and the judgment was affirmed: *Held*, that plaintiffs could sue defendant alone for the use and occupation of the land pending the appeal, and were not bound to sue on the appeal-bond.—*Meeker v. Gerdella*, Wash., 23 Pac. Rep. 837.